***United States Court of Appeals***

***for the Second Circuit***

# JOINT APPENDIX

# 76-7575

## United States Court of Appeals
### FOR THE SECOND CIRCUIT

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,
*Plaintiff-Appellant-Cross Appellee,*

—against—

SS PONCE DE LEON, her engines, tackle, etc., SUN LEASING CO., and TRANSAMERICAN TRAILER TRANSPORT, INC.,
*Defendants-Appellees-Cross Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

# JOINT APPENDIX


KIRLIN, CAMPBELL & KEATING
*Attorneys for Plaintiff-Appellant-Cross-Appellee*
*Getty Oil Company*
*(Eastern Operations), Inc.*
120 Broadway
New York, New York 10005

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA
*Attorneys for Defendants-Appellees and Cross-Appellants*
*Sun Leasing Co., and Transamerican Trailer Transport, Inc.*
576 Fifth Avenue
New York, New York 10036



UNITED STATES COURT OF APPEALS
FILED
JAN 21 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

INDEX


| | Page |
|---|---|
| Docket Entries | 5 |
| Complaint of Getty Oil Company (Eastern Operations), Inc. | 6 |
| Defendants' Answer to Complaint and Counterclaim | 12 |
| Plaintiff's Reply to Counterclaim | 16 |
| Pre-Trial Order | 17 |
| Plaintiff's Proposed Findings of Fact | 33 |
| Plaintiff's Proposed Conclusions of Law | 59 |
| Defendants' Proposed Findings of Fact | 67 |
| Defendants' Proposed Conclusions of Law | 89 |
| Plaintiff's Comments on Defendants' Proposed Findings of Fact | 92 |
| Opinion No. 44,005 of Judge R. E. Levet with Findings of Fact and Conclusions of Law | 100 |
| Amendment to Opinion No. 44,005 | 128 |
| Letter from Judge Levet to Judge Pierce 4/12/76 | 129 |
| Final Judgment signed by Judge L. W. Pierce | 131 |
| Plaintiff's Notice of Appeal | 133 |
| Defendants' Notice of Cross-Appeal | 134 |


Witnesses


Excerpts from the Pre-Trial stimony of the Following Witnesses

Plaintiff's Exhibit 1, the deposition of George Farago, Third Mate and Watch Officer of the WILMINGTON GETTY..... 135

INDEX


Page

Plaintiff's Exhibit 10, the deposition of Captain Jens G. Brixen, Master of the WILMINGTON GETTY.... 212

Plaintiff's Exhibit 16, the discovery deposition of Roger J. Meade, Master of the PONCE DE LEON..... 249

Plaintiff's Exhibit 28, the Coast Guard Transcript of Testimony of Joseph Patocka, Chief Mate of the PONCE DE LEON..... 354

Plaintiff's Exhibit 29, the Coast Guard Transcript of Testimony of William J. Benson, Third Mate and Watch Officer of the PONCE DE LEON..... 365

Plaintiff's Exhibit 30, the Coast Guard Transcript of the Testimony of Jose A. Ahorrio, Second Officer of the PONCE DE LEON..... 380

Defendants' Exhibit A. Coast Guard Transcript of Jens G. Brixen, Master of the WILMINGTON GETTY..... 389

Defendants' Exhibit B, Coast Guard Transcript of George Farago, Third Mate and Watch Officer of the WILMINGTON GETTY..... 401

Trial Transcript (Liability Trial), September 19, 1975

Opening Statements of Counsel..... 410

Testimony of Nicholas J. Dervin, Expert Witness called on behalf of Defendants..... 448

Testimony of Gilbert Fonda - Radar Expert called on behalf of Plaintiff..... 534

Trial Transcript (Damages Trial), September 29, 1976..... 556

INDEX

OTHER EXHIBITS


| | Page |
|---|---|
| Plaintiff's Exhibit 5, Deck Bell Book of the WILMINGTON GETTY, May 10, 1973 | 565 |
| Plaintiff's Exhibit 7, Statement of George Farago, Third Mate and Watch Officer of the WILMINGTON GETTY | 567 |
| Plaintiff's Exhibit 9, Diagram of Radar Cursor of the WILMINGTON GETTY | 569 |
| Plaintiff's Exhibit 11, U. S. Coast Guard Report signed by Jens G. Brixen, Master of the WILMINGTON GETTY | 571 |
| Plaintiff's Exhibit 12, Statement of Captain Jens G. Brixen, Master of the WILMINGTON GETTY | 574 |
| Plaintiff's Exhibit 13, Four Photographs of Bow of the WILMINGTON GETTY | 577 |
| Plaintiff's Exhibit 14, Local Notice to Mariners, Closing Anchorage 49C and 25 | 587 |
| Plaintiff's Exhibit 24 (Pages 28 and 29) Showing Maneuvering Characteristics of the PONCE DE LEON | 589 |
| Plaintiff's Exhibit 27, Two Photographs of Port Side of the PONCE DE LEON | 593 |

Getty Oil Company (Eastern Operations) Inc. vs. SS Ponce De Leon her engines, et ano.

JUDGE PIERCE

73 CIV. 348

| DATE | PROCEEDINGS | Date Order Judgment N |
|---|---|---|
| -8-73 | Filed Complaint issued summons. | |
| .2-73 | Filed defts. ANSWERS TO complaint and counterclaim. | DRMFB |
| .4-73 | Filed pltff's REPLY to counterclaim. | KC&K |
| -26-74 | Pre Trial Conference held - Paper to a Magistrate | |
| 8.74 | Filed Orde that this matter is referred to Magistrate Jacobs as indicated. Pierce J.. | |
| 17-74 | Filed Defts' Notice of deposition. | |
| 6-75 | Filed pre-trial order-Pierce, J.--consented to. | |
| -24-75 | ACTION REASSIGNED TO LEVET,J. | |
| 25-75 | Filed Designation of Trial Counsel for pltff. | |
| -03-75 | Filed deft's designation of trial counsel. | |
| -16-75 | Before Levet,J. Pre-TRIAL Conference held -Non Jury to be ready when called. Trial time 1 day. | c |
| -19-75 | Before Levet,J. Non-Jury trial begun & completed. Post trial papers to be submitted after the reporters transcript is available 2 weeks thereafter for pltff & One week thereafter for the deft. Decision Reserved. | |
| c.31-75 | Filed transcript of record of proceedings dated 9-19-75. | |
| -09-76 | Filed OPINION #44,005, with findings of fact & conclusions of law Pltff. is entitled to an interlocutory decree in accordance with this opinion. The amount of damages will be determined by the court. Submit interlocutory decree on notice. Levet,J. m/n | |
| -26-76 | Filed Amendment to Opinion Findings of fact & conslusions of law #44005 dated 3-5-76: My opinion dated 3-5-76 is amended as indicated.So ordered. Levet,J. m/n | |
| -05-76 | Filed Interlocutory Judgment: Ordered that pltff. is entitled to recover 80% of the damages sustained by Wilmington Getty. Deft's Sun Leasing Co. & Transamerican Trailer Transport are entitled to recover 20% of damages sustained by the Ponce De Leon. Levet,J. Judgment Ent. Clerk. m/n Ent.4-5-76. | Kelz CRee |
| | (Pierce) | |
| -26-76 | REASSIGNED TO PIERCE , J. THIS DATE. | |
| 9-28-76 | Filed Notice that pltff will take deposition of Bethlehem Steel etc. on 9-29-76. | |
| 10-20-76 | Filed pltffs pre trial memorandum. | |
| 10-20-76 | Filed defts memorandum of law of interest. | |
| 10-21-76 | Filed Final Judgment # 76, 949: Orderedthat pltff Getty Oil Co. recover 80 % of its damages namely $116,800 from defts, and that defts Sun Leasin Co. and Transamerican Trailer Transport, i nc. recover 20% of their damages namely $234,000 namely $46, 800 from pltff etc, as indicated, and that the takable costs of the prties shall be apportioned in the same ration as the liabilities heretofore dtermined, Pierce, J. Judgment Entered, Clerk 10-22-76 M/N. | |
| 11-19-76 | Filed Notice of Appeal to the U.S.C.A LP from the order entered on 10-22-76 etc as indicated.M/N | |
| 10-22-76 | FILED TRANS. RECORD OF PROCEEDINGS DTD 9-29-76 | |
| 12-1-76 | Filed Notice that defts appeal to the U.S.C.A.P. from the order of the District Court dtd 10-21-76 . M/N. | |
| 12-3-76 | Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.P. this date. | |
| 11-23-76 | Filed trial memorandum on behalf of plaintiff Getty Oil Co.(Eastern Operations), which was received in court on July 30-75. | |
| 11-23-76 | Filed Post-trial memorandum on behalf of plaintiff Getty Oil Co.(Eastern Operations), wh was received in court of October 22-75. | |
| 11-23-76 | Filed plaintiff's reply memorandum which was received in court on November 7-75. | |
| 12-3-76 | Filed stipulation designating certain documents to be transmitted to U.S.C.A. | |

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| GETTY OIL COMPANY (EASTERN OPERATIONS), INC., Plaintiff, -against- SS PONCE DE LEON, her engines, tackle, etc., Sun Leasing Co. and Transamerican Trailer Transport, Inc., Defendants. | COMPLAINT 73 Civ. 3480 (LWP) In Admiralty |

The complaint of Getty Oil Company (Eastern Operations), Inc., as owner of the steamship WILMINGTON GETTY, against the steamship PONCE DE LEON, her engines, tackle, etc, in rem and against Sun Leasing Co. and Transamerican Trailer Transport Inc. in personam in a cause of collision, civil and maritime, alleges upon information and belief:

1. This is a cause of admiralty and maritime jurisdiction, as hereinafter more fully appears, and an admiralty and maritime claim within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure.

2. At all times hereinafter mentioned, plaintiff was and still is a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at 660 Madison Avenue, Borough of Manhattan, City and State of New York and was the owner and operator of the steamship WILMINGTON GETTY.

3. At all times hereinafter mentioned, the steamship WILMINGTON GETTY, until the collision hereinafter

described, was in all respects tight, staunch, seaworthy and properly manned and equipped.

4. At all times hereinafter mentioned, the defendant Sun Leasing Co. was and still is a domestic corporation organized and existing under and by virtue of the laws of one of the states of the United States, with an office and place of business at 358 St. Marks Place, Staten Island, New York, and was and still is the owner of the steamship PONCE DE LEON.

5. At all times hereinafter mentioned, the defendant Transamerican Trailer Transport, Inc. (hereinafter TTT) was and still is a domestic corporation organized and existing under and by virtue of the laws of one of the states of the United States, with an office and place of business at 358 St. Marks Place, Staten Island, New York and was and still is the operator of the steamship PONCE DE LEON.

6. The steamship PONCE DE LEON is now within the district and within the jurisdiction of this Honorable Court or will be during pendency of this action.

7. On the morning of May 10th, 1973, the steamship WILMINGTON GETTY, en route from Delaware City to Bayonne, New Jersey, was forced to anchor, due to poor visibility, in Gravesend Bay, New York Harbor, about six-tenths of a mile from Norton Point. A watch was posted on her bridge and bow and proper fog signals were sounded.

Shortly after 1300 hours, an inbound vessel, later identified as the PONCE DE LEON, was observed on the WILMINGTON GETTY's radar, to be apparently leaving the channel and

approaching the anchored WILMINGTON GETTY. The WILMINGTON GETTY called the PONCE DE LEON on VHF Channel 13 and advised her that the WILMINGTON GETTY was at anchor off Norton Point. The PONCE DE LEON replied that she intended to pass inside the WILMINGTON GETTY. Thereafter, the PONCE DE LEON was sighted looming out of the heavy fog, with speed, close to the WILMINGTON GETTY's starboard bow. The WILMINGTON GETTY promptly sounded the danger signal, but at about 1313 hours the PONCE DE LEON struck the WILMINGTON GETTY, causing extensive damage to the WILMINGTON GETTY.

8. The aforesaid collision and all losses and damages resulting therefrom were not caused or contributed to by any fault, negligence or lack of due care on the part of the WILMINGTON GETTY or of the plaintiff or any person for whom the plaintiff was or is responsible, but were wholly due to and caused by the faults, negligence and lack of due care of Sun Leasing Co., TTT and the steamship PONCE DE LEON, and the persons in charge of her, who were the servants and employees of Sun Leasing Co. and/or TTT, in the following respects, among others, which will be shown at the trial hereof:

(a) The persons in charge of the PONCE DE LEON were inattentive to their duties.

(b) She negligently struck the anchored WILMINGTON GETTY.

(c) She negligently proceeded at an immoderate speed in reduced visibility.

(d) She negligently failed to heed the warning of the WILMINGTON GETTY concerning

the WILMINGTON GETTY's anchorage position.

(e) She negligently attempted to turn inside the anchored WILMINGTON GETTY.

(f) She negligently failed to keep a proper lookout.

(g) She negligently failed to make proper use of her radar.

(h) When danger of collision was or should have been apparent, she failed to take prompt and proper action with her engine, and/or rudder to avoid the collision or minimize the damages.

9. By reason of the aforesaid collision, the plaintiff has sustained damages of about $180,000 as nearly as can now be ascertained, together with interest thereon, no part of which sum has been paid, although duly demanded. Plaintiff reserves the right to amend this complaint to increase the amount of damages claimed and, in such other respects as may be warranted as further material information becomes available.

WHEREFORE, plaintiff demands:

1. That process in rem issue for the arrest of the steamship PONCE DE LEON, her engines, tackle, etc. in accordance with Rule C(3) of the Supplemental Rules for Certain Admiralty and Maritime claims of the Federal Rules of Civil Procedure;

2. That plaintiff have judgment against the steamship PONCE DE LEON, the defendants Sun Leasing Co. and TTT for the damages sustained as aforesaid, together with interest and costs; and

3. That plaintiff may have such other, further and different relief as may be just and proper.

Dated: New York, New York
August 3, 1973

KIRLIN, CAMPBELL & KEATING

By _____
A Member of the Firm

Attorneys for Plaintiff
Office and P.O. Address
120 Broadway
New York, New York 10005

STATE OF NEW YORK )
: ss:
COUNTY OF NEW YORK )

D. G. Cowie , being duly sworn, says:

I am A Vice President of Getty Oil Company (Eastern Operations), Inc., the plaintiff herein. I have read the foregoing complaint and the same is true to the best of my knowledge, except as to those matters alleged to be on information and belief and as to those matters I believe it to be true. The reason this verification is made by deponent is that the plaintiff herein is a corporation and deponent is an officer thereof.

The sources of my information and the grounds for my belief are records and documents relating to the matters in this action.

D. G. Cowie

Sworn to before me this
3rd day of August, 1973.

Eugene F. Gerving
Notary Public

EUGENE F. GERVING
NOTARY PUBLIC, State of New York
No. 60-6499375
Qualified in Westchester County
Commission Expires March 30, 1974

4987 VJB

S. ATT'Y'S NO. 5-13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

-against-

SUN LEASING CO., and TRANSAMERICAN TRAILER TRANSPORT, INC.,

Defendants.

----------X

WITH ANSWERS TO COMPLAINT AND COUNTERCLAIM

73 Civ. 3480 (LWP)

Defendants, by their attorneys, Dougherty, Ryan, Mahoney, Pellegrino & Giuffra, for an answer to the complaint herein and counterclaim allege upon information and belief as follows:

FIRST: Defendants admit the allegations contained in paragraph 1 of the complaint.

VJL

SECOND: Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 of the complaint.

RHE

THIRD: Defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3 of the complaint.

AJB

LJB

FOURTH: Defendants admit the allegations contained in paragraph 4 of the complaint.

FIFTH: Defendants admit the allegations contained in paragraph 5 of the complaint.

SIXTH: Defendants admit the allegations contained in paragraph 6 of the complaint.

SEVENTH: Defendants admit that shortly after 1300 hours on May 10, 1973, the SS PONCE DE LEON was in a collision with the SS WILMINGTON GETTY. Except as so admitted, defendants

977J

deny the allegations contained in paragraph 7 of the complaint.

EIGHTH: Defendants deny the allegations contained in paragraph 8 of the complaint.

NINTH: Defendants deny the allegations contained in paragraph 9 of the complaint.

AS AND FOR A COUNTERCLAIM, DEFENDANTS, SUN LEASING CO. & TRANSAMERICAN TRAILER TRANSPORT INC. ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS:

TENTH: This is a cause of admiralty and maritime jurisdiction, as hereinafter more fully appears, and an admiralty and maritime claim within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure.

ELEVENTH: Based on the allegations of the complaint, plaintiff is the owner and operator of the SS WILMINGTON GETTY and is a corporation organized and existing under the laws of the State of Delaware, having an office and place of business at 660 Madison Avenue, New York, New York.

TWELFTH: Defendants repeat and reallege each and every allegation contained in paragraphs FIRST through NINTH inclusive of this Answer as if specifically pleaded and set forth at length herein.

THIRTEENTH: The collision alleged in paragraph 7 of the complaint occurred by reason of negligent navigation and lack of due care of plaintiff, Getty Oil Company (Eastern Operations), Inc., and the WILMINGTON GETTY, and the persons in charge of her who were the servants and employees of Getty Oil Company (Eastern Operations) Inc., in the following respects, among others;

a) The persons in charge of the SS WILMINGTON GETTY were inattentive to their duties.

b) The SS WILMINGTON GETTY was negligent in improperly positioning herself within the navigable limits of Ambrose Channel.

c) SS WILMINGTON GETTY negligently failed to keep a proper lookout.

d) SS WILMINGTON GETTY negligently failed to make proper use of her radar.

e) SS WILMINGTON GETTY negligently failed to warn other vessels of her position.

f) When danger of collision was, or should have been apparent the SS WILMINGTON GETTY failed to take prompt and proper action with her engines and other means at her disposal to avoid the collision or minimize the damages.

FOURTEENTH: By reason of the aforesaid collision the defendants have sustained damages of about $350,000 as nearly as can now be ascertained, together with interest thereon, no part of which sum has been paid, although duly demanded. Defendants reserve the right to amend this counterclaim to increase the amount of damages claimed and in such other respects as may be warranted as further material information becomes available.

WHEREFORE, defendants pray that the complaint herein be dismissed and that defendants have judgment against the plaintiff and the SS WILMINGTON GETTY for defendants' damages with interest and cost and that the SS WILMINGTON GETTY may be condemned and sold to satisfy said judgment and defendants further pray for such other and further relief as to the Court may seem just and proper.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA
Attorneys for Defendants

BY: _____

Office and P.O. Address
576 Fifth Avenue
New York, New York 10036

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK)

VINCENT J. BARRA, being duly sworn, deposes and says:

That he is an attorney and counsellor at law and an associate of the firm of Dougherty, Ryan, Mahoney, Pellegrino & Giuffra, attorneys for the defendants in the captioned action. That he has read the foregoing Answers to the Complaint and Counterclaim and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

That the reason this verification is made by deponent and not by the defendants is that none of the officers of the defendants are within the District where deponent has his office.

That the source of deponent's knowledge and the grounds of his belief is information received from the plaintiff and documents in his possession.

Sworn to before me this
27th day of September, 1973

1974

— Office copy 13 —

MG. ATTY'S No. 15-13

Filed 10/4/73

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docketed 10/4/73

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

-against-

SUN LEASING CO., and TRANSAMERICAN TRAILER TRANSPORT, INC.,

Defendants.

73 Civ. 3480 (LWP)

REPLY OF GETTY OIL COMPANY (EASTERN OPERATIONS), INC. TO COUNTERCLAIM OF DEFENDANTS

Getty Oil Company (Eastern Operations), Inc., defendant to the counterclaim, replies to the counterclaim of defendants Sun Leasing Co. and Transamerican Trailer Transport, Inc., upon information and belief as follows:

1. It admits the matters alleged in paragraphs TENTH and ELEVENTH of the answer and counterclaim.

2. It denies the matters alleged in paragraphs TWELFTH and THIRTEENTH of the answer and counterclaim.

3. It admits non-payment. It denies the other matters alleged in paragraph FOURTEENTH of the answer and counterclaim.

WHEREFORE, Getty Oil Company (Eastern Operations), Inc., the defendant to the counterclaim, prays that the court grant the relief prayed for in the complaint and the counterclaim herein be dismissed with costs, and that it may have such other and further relief as may be just and proper in the premises.

KIRLIN, CAMPBELL & KEATING

By _____
A Member of the Firm
Attorneys for Plaintiff and
Defendant to the Counterclaim

Dated: New York, N.Y.
October 3, 1973

79790

OFFICE COPY

Kirlin, Campbell & Keating
120 BROADWAY
NEW YORK, N. Y. 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

-against-

SS PONCE DE LEON, her engines, tackle, etc., Sun Leasing Co. and Transamerican Trailer Transport, Inc.

Defendants.

PRE-TRIAL ORDER

73 Civil 3480 (LWP)

IN ADMIRALTY

Filed 2/6/75

The parties to this action, by their attorneys, appeared before the court at a pre-trial conference pursuant to local Calendar Rules 6 and 13 and Rule 16 of the Federal Rules of Civil Procedure, and the following action was taken:

1. The pleadings were agreed to be deemed amended in accordance with the framing of the issues in this action in Paragraph 9 of this pre-trial order.

2. The parties agreed that the trial of this action should be based on this order and upon the pleadings as amended.

3. (a) The parties stipulated that the following facts are not in dispute in this action (each party reserving the right to object to the materiality of any such stipulated fact and its relevancy to the issues);

(1) This is a case of admiralty and maritime jurisdiction.

(2) Getty Oil Company (Eastern Operations), Inc. was and still is a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at 660 Madison Avenue, New York, N. Y. and was and still is the owner and operator of the steamtanker WILMINGTON GETTY. The WILMINGTON GETTY is a steamtanker 13,659 gross tons, 583.5 feet in overall length and 74.2 feet in breadth. On May 10, 1973

JAN 29 RECD

she was laden with a cargo of about 20,000 tons of heating oil and gasoline and her drafts were 31 feet 9 inches forward and 31 feet 11 inches aft. She was engaged on a voyage from Delaware City, Delaware bound for Bayonne, New Jersey.

(3) Sun Leasing Co. and Transamerican Trailer Transport, Inc., defendants, were and still are domestic corporations organized and existing under and by virtue of the laws of one of the states of the United States with offices and places of business at 358 St. Marks Place, Staten Island, New York and were and still are the owner and operator of the steamship PONCE DE LEON. The PONCE DE LEON is a steamship of 15,134 gross tons, 700 feet in overall length, 92.2 feet in breadth. The distance from her bridge to her bow is approximately 350 feet. Her stern turbine engines are of 32,000 horsepower. At the material times she was laden with a cargo of trailers to drafts of 21 feet, 8 inches forward and 24 feet 6 inches aft. Her displacement was thus approximately 19,400 tons. She was engaged on a voyage from San Juan, Puerto Rico to the Transamerican Trailer Transport Terminal, Staten Island, New York.

(4) On the morning of May 10, 1973 the WILMINGTON GETTY arrived in New York Harbor and proceeded up Ambrose Channel. The weather conditions included dense fog. As the WILMINGTON GETTY proceeded up the channel, her radar indicated that the various anchorage areas were crowded and her master decided to anchor off Norton Point, Brooklyn; and at approximately 0836 hours, the WILMINGTON GETTY anchored off Norton Point.

(5) On May 10, 1973 as the PONCE DE LEON transited Ambrose Channel in ~~dense~~ fog and she was advised that the tugs assigned to assist her into her berth were fog bound and would be unable to assist her for an indefinite period of time. The master of the PONCE DE LEON thereupon decided to anchor in Gravesend Bay Anchorage Area No. 25.

(6) At approximately 1314 hours the PONCE DE LEON collided with the anchored ~~and stationary~~ WILMINGTON GETTY, causing damage to the WILMINGTON GETTY's bow and the PONCE DE LEON's port side.

3. (b) It is the plaintiff's contentions that:

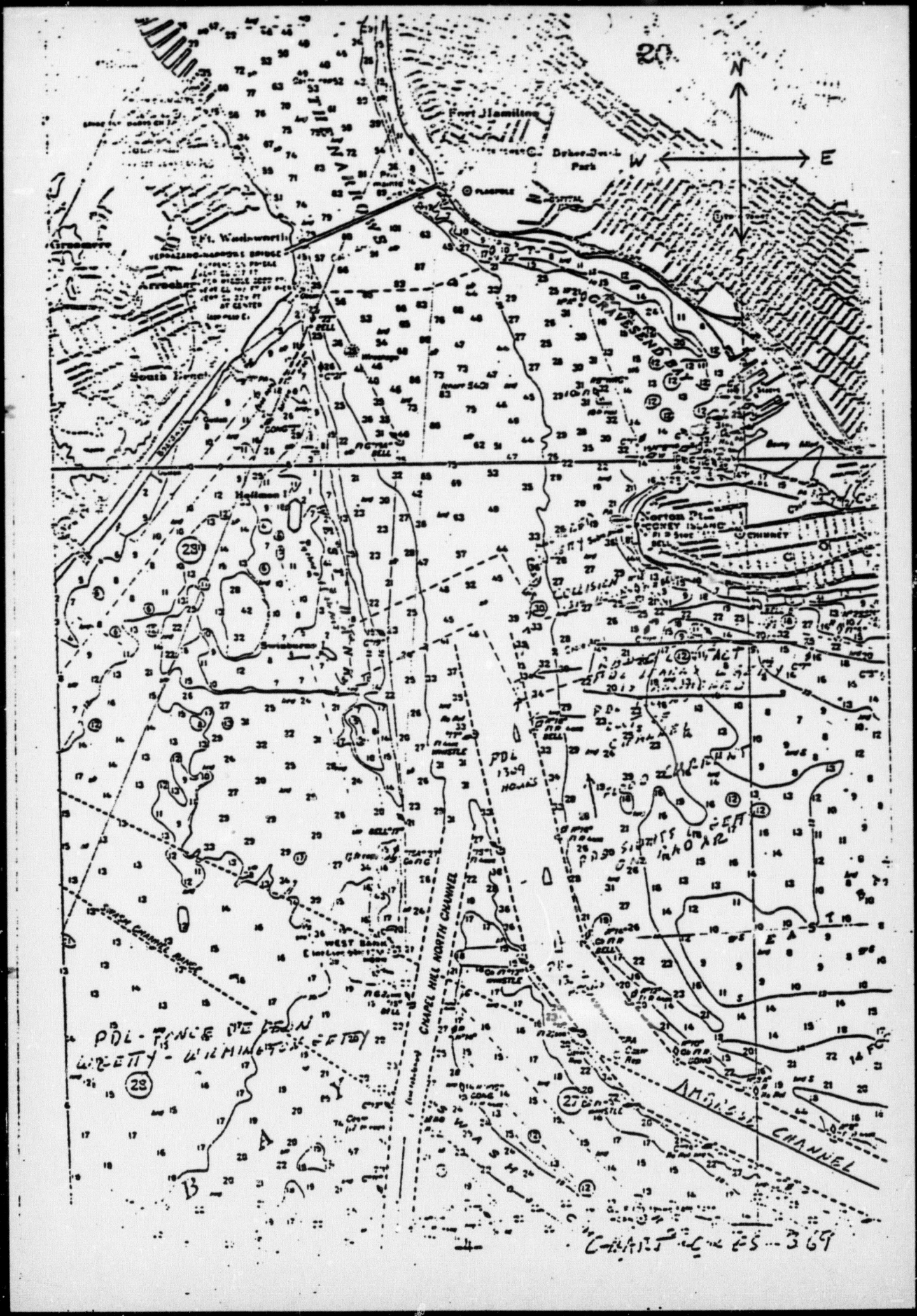
The collision between the moving PONCE DE LEON and the properly anchored WILMINGTON GETTY occurred through the sole fault and negligence of those in charge of the PONCE DE LEON.

Apart from her numerous violations of statute, a presumption of negligence arises when a moving vessel collides with a properly anchored vessel. The presumption suffices to make a prima facie case of negligence against the moving vessel, which on the facts of this case cannot be rebutted.

The following facts have been established based primarily on the log books and records of the PONCE DE LEON, the deposition testimony of the master of the PONCE DE LEON, Captain Roger J. Meade, and the deposition of the watch officer of the WILMINGTON GETTY, Mr. George Farago:

1. At the time of the collision, the WILMINGTON GETTY was anchored approximately 375 yards to the right or easterly of the channel. (Meade Dep. p. 82.)

2. The position of the WILMINGTON GETTY at anchor, outside of the channel, and the positions and approximate movements of the PONCE DE LEON are illustrated on the attached copy of a portion of Chart C&GS 369.


20
N
W
E
S
Fort Hamilton
Dyker Beach Park
Ft. Wadsworth
Gravesend
South Brooklyn
Hollman I.
Norton Pt.
Coney Island
Chapel Hill North Channel
Ambrose Channel
PDL - Fine line on
Westy - Williamsburg
A
B
C
28
29
27

3. At all times after the WILMINGTON GETTY anchored, a seaman was placed on her bow to ring her bell forward for 5 seconds at intervals not to exceed 1 minute, the proper fog signal for a vessel at anchor under the U.S. Inland Rules, Article 15(d) 33 U.S.C.A. § 191(d). A licensed mate was stationed on her bridge to monitor her bridge-to-bridge radio telephone which was set on Channel 13. This action was not specifically required by the Bridge-to-Bridge Radio Telephone Act 33 U.S.C.A. § 1201 et seq. Since the WILMINGTON GETTY was anchored well clear of the channel and she was not navigating, it was a reasonable precaution for the circumstances. The mate also monitored her radar which was set on the 3 mile scale. Frequent checks were made to verify that the WILMINGTON GETTY was maintaining her position at anchor. (Farago Dep. pp. 14, 15.) Z18

4. During the course of the day numerous ships proceeding up and down Ambrose Channel and passed well clear, to the west, of the anchored WILMINGTON GETTY. (Farago Dep. pp. 15,16.) The anchored WILMINGTOM GETTY posed no problem for any vessel remaining on a course proceeding up or down Ambrose Channel.

5. At 1302 hours the PONCE DE LEON passed Buoy R-14 in Ambrose Channel and at 1309 hours the PONCE DE LEON passed Buoy R-18 in Ambrose Channel. The distance between Buoy 14 and Buoy 18 is approximately 1.5 miles. By covering this distance in approximately 7 minutes, the PONCE DE LEON was proceeding at a speed of approximately 10 1/2 to 11 knots which conformed to her engine setting of Half Ahead. (Meade Dep. pp. 27-29.) The current was flooding at a velocity estimated by Meade at about .5 knots. (Dep. p. 40.)

6. When the PONCE DE LEON was between buoys 14 and 18 in the Ambrose Channel, the PONCE DE LEON's master first sighted the anchored WILMINGTON GETTY on his radar at a distance of between 1 1/2 to 2 miles. (Meade Dep. pp. 22, 23.)

7. The master of the PONCE DE LEON estimated the WILMINGTON GETTY was approximately .5 to .7 miles off Norton Point. She was to the east or inside the line of buoys marking Ambrose Channel (Meade Dep. p. 24) - clearly the WILMINGTON GETTY was outside the channel.

8. The master of the PONCE DE LEON testified he "more or less" watched the WILMINGTON GETTY continuously after he first sighted her. He did not know whether the WILMINGTON GETTY was moving or anchored, but he made no manual plot of the movements of the WILMINGTON GETTY. He claimed he made a "mental plot" of the WILMINGTON GETTY and assumed she was a slow moving vessel. At p. 51 Meade testified: "If I had plotted, I would think the plot would have shown that either he was stationary or underway, very slow. At those slow speeds, there is very little difference."

9. The PONCE DE LEON's course was changed to the right very shortly after passing Buoy 18. (Meade Dep. p. 36.) The PONCE DE LEON thereupon deliberately left the channel and proceeded on a curving course that was ultimately to take her into collision with the anchored WILMINGTON GETTY.

10. Approximately 3 to 5 minutes before the collision (or between approximately 1309 hours and 1311 hours) there were radio telephone conversations between the master of the PONCE DE LEON and the watch officer on the WILMINGTON GETTY, Mr. Farago. The conversations occurred after the PONCE DE LEON turned out of the channel toward the WILMINGTON GETTY. (Farago Dep. pp. 18-22, Meade Dep. pp. 49-50.) The WILMINGTON GETTY informed the PONCE DE LEON that it was an anchored vessel. The PONCE DE LEON informed the WILMINGTON GETTY that the PONCE DE LEON was going to pass between the anchored WILMINGTON GETTY and Norton Point. (Meade Dep. pp. 35-36.)

11. About 3 to 4 minutes before the collision the chief officer of the PONCE DE LEON testified at the United States Coast Guard Hearing that he heard a faint ship's bell which he reported to the master of the PONCE DE LEON at which point the master of the PONCE DE LEON gave an order for right helm. The master of the PONCE DE LEON at his deposition did not recall hearing a report from the chief officer but he did recall giving an order for right helm. (Meade Dep. pp. 43, 44.)

12. The master of the PONCE DE LEON ordered right helm at that point because he saw the WILMINGTON GETTY on radar and saw that the PONCE DE LEON was getting into a close situation and he was trying to avoid the WILMINGTON GETTY. (Meade Dep. p. 44.)

13. At no time prior to the collision did the PONCE DE LEON stop or reverse her engines. (Meade Dep. p. 45.)

14. The master of the PONCE DE LEON knew the WILMINGTON GETTY was anchored and he knew she could not move in a short time to assist in avoiding collision. (Meade Dep. p. 45.) According to Farago, Dep. p. 72, it would take at least two minutes before the WILMINGTON GETTY could release her anchor pawl and brake and try to move backward.

15. No one on the PONCE DE LEON ever informed the WILMINGTON GETTY that the PONCE DE LEON by her own efforts could not avoid collision with the WILMINGTON GETTY and no one on the PONCE DE LEON ever asked those on the WILMINGTON GETTY to take any action to help avoid collision.

16. The distance between Buoy 18, which PONCE DE LEON passed at 1309 hours, and the collision position, which the PONCE DE LEON reached at 1314 hours, is approximately 1 mile. By covering that distance in 5 minutes, the PONCE DE LEON was proceeding at an average speed of approximately 12 knots. (Meade Dep. p. 32.)

17. In the dense fog prevailing, the master of the PONCE DE LEON described the visibility as "zero" and he could hardly see past his own bow 350 feet from the PONCE DE LEON's bridge. (Meade Dep. p. 18.)

18. The master of the PONCE DE LEON sighted the anchored WILMINGTON GETTY "just seconds before collision;" and at the time of sighting the WILMINGTON GETTY, if he had backed the PONCE DE LEON's engines full speed astern, he would not have had time to stop the PONCE DE LEON before collision. In other words, because of his speed, he could not stop in the distance of his visibility in dense fog. (Meade Dep. pp. 48, 49.)

In summary, the PONCE DE LEON, while proceeding up Ambrose Channel in dense fog, with visibility nil, at an immoderate speed of between 10 1/2 and 12 knots, sighted the WILMINGTON GETTY at a distance of 1 1/2 to 2 miles but made no radar plot to determine her course and speed. From a mental observation, the master of the PONCE DE LEON assumed the WILMINGTON GETTY was underway at a very slow speed. However, without knowing precisely what the WILMINGTON GETTY was doing, the PONCE DE LEON turned out of the channel to attempt to proceed between the WILMINGTON GETTY and Norton Point on the way to her own anchorage. Radio communications were established 3 - 5 minutes before collision, but the PONCE DE LEON continued proceeding toward the anchored WILMINGTON GETTY even though it was told twice that the WILMINGTON GETTY was anchored and those on the PONCE DE LEON knew the WILMINGTON GETTY could not get out of the way in the short time available. The PONCE DE LEON's engines were not stopped after those in charge of her heard the fog signals from the anchored WILMINGTON GETTY, and upon visual sight, just seconds before collision, there was not time to stop the PONCE DE LEON's excessive headway to avoid collision.

Considering all the circumstances, there was nothing those on the WILMINGTON GETTY could do to assist in avoiding the collision.

The collision would never have occurred if the PONCE DE LEON's master had not negligently turned out of the channel, with excessive speed, and proceeded to go unnecessarily close to the anchored WILMINGTON GETTY, where due to inattention or misjudgment of the effect of the current on the PONCE DE LEON, collision could not be avoided.

The following statutory faults were committed by the PONCE DE LEON:

1. Immoderate speed in violation of Article 16(a) [33 U.S.C.A. § 192(a)] because she could not stop after visually sighting the anchored WILMINGTON GETTY;
2. Failure to keep a proper radar lookout in violation of Article 29 [33 U.S.C.A. § 221] in permitting herself to come so close to the anchored WILMINGTON GETTY that collision could not be avoided.
3. Failure to stop her engines in violation of Article 16(a) (33 U.S.C.A. § 192(a)] after hearing the fog signals of the WILMINGTON GETTY prior to sighting her visually.

On a finding that the PONCE DE LEON violated any of the statutes mentioned above she would have the difficult burden of proving that her violation or violations could not have contributed to the collision. The Pennsylvania, 86 U.S. 125, 136. The PONCE DE LEON cannot sustain that burden and must be condemned in sole fault for the collision.

3(c) It is the defendants' Sun Leasing Co. and Transamerican Trailer Transport, Inc.'s contentions that:

The collision between PONCE DE LEON and the WILMINGTON GETTY occurred through the fault and negligence of those in charge of the WILMINGTON GETTY.

The WILMINGTON GETTY was anchored outside the anchorage area limits and in an extremely dangerous position to passing vessels.

The PONCE DE LEON was proceeding up Ambrose Channel in a safe and seamanlike manner. The speed of the PONCE DE LEON varied as it proceeded and in fact, its speed was dictated by the SS SEALAND BOSTON which the PONCE DE LEON was following up the Channel Also, three to four vessels were following the PONCE DE LEON and it would have been utterly unsafe for the Master of the PONCE DE LEON to proceed at any other speed than that which kept his relative distance in the line of vessels proceeding up the narrow Ambrose Channel.

While transiting Ambrose Channel, the Master of the PONCE DE LEON was advised that his tugs could not be made available and that he should anchor at the nearest safe anchorage. With this information, the Master of the PONCE DE LEON decided to alter course to the right at Buoy 18 and anchor in the only available anchorage area. Just prior to turning right at Buoy [illegible] the Master of the PONCE DE LEON observed an additional target on the radar scope. The Master of the PONCE DE LEON immediately called several times on channel 13 to the vessel underway off Norton's Point requesting her course and intention. At this time, the Master of the PONCE DE LEON determined from the radar and his extensive experience that this vessel was underway at very slow speeds waiting the arrival of her tugs to proceed into

New York Harbor. In more than one thousand voyages past this exact location, the Master of the PONCE DE LEON never saw a vessel anchor in such a precarious position as the target he observed which later turned out to be the WILMINGTON GETTY. There was no response to these initial calls on channel 13 and the Master of the PONCE DE LEON decided that the safest maneuver was to alter course to the right at Buoy 18 and proceed to anchor.

The mate on watch aboard the WILMINGTON GETTY did not respond to these requests until the PONCE DE LEON had already committed herself and turned right at Buoy 18. The WILMINGTON GETTY was negligent in failing to advise oncoming vessels over channel 13 that she was at anchor outside the anchorage area, and that all vessels should be aware of her dangerous situation, especially in view of the fact that the WILMINGTON GETTY was loaded with a full cargo of gasoline. If the PONCE DE LEON had been advised by the WILMINGTON GETTY that she was at anchor, the PONCE DE LEON would not have altered course to the right at Buoy 18 but would have continued up the channel past the WILMINGTON GETTY and then turned right into the anchorage. The Master of the PONCE DE LEON did not so proceed since he determined that the WILMINGTON GETTY was underway up the channel and such a maneauver would have been extremely dangerous.

After the PONCE DE LEON turned right at Buoy 18, the WILMINGTON GETTY responded to the PONCE DE LEON's calls on channel 13 and stated that it was not underway but at anchor. The Master of the PONCE DE LEON had three options at this time. He could have stopped his engines, turned left or continued right. Because of the flood tide, the Master feared that if he stopped his engines the PONCE DE LEON would drift down on the WILMINGTON GETTY and strike her broad side. Since the vessel was already

swinging right, the Master of the PONCE DE LEON determined that he could not overcome the right swing and bring the vessel left past the WILMINGTON GETTY. The only safe alternative was for the PONCE DE LEON to continue right and avoid the WILMINGTON GETTY, being ever mindful of the shoals off Norton's Point, if the PONCE DE LEON came too far right.

The PONCE DE LEON did everything in its power to avoid the collision after having its navigation impaired by the dangerous location that the WILMINGTON GETTY was anchored.

Furthermore, the mate on the WILMINGTON GETTY did nothing to avoid the collision. The facts are clear that the mate on the WILMINGTON GETTY knew the PONCE DE LEON was coming right to pass between it and Norton's Point. The mate also knew of the shoal water off Norton's Point and that the PONCE DE LEON would be navigating in close quarters. The PONCE DE LEON was sighted on radar by the mate on the WILMINGTON GETTY some ten to twelve minutes before collision, but he did not maintain a radar plot to determine the PONCE DE LEON's closest point of approach. The mate on the WILMINGTON GETTY simply stated that by observing the radar he assumed that the PONCE DE LEON would pass clear. There can be no question that his evaluation of the radar was incorrect. The mate further testified that if he correctly observed the PONCE DE LEON was on a collision course after she had turned right at Buoy 18, he could have averted the collision by letting the anchor chain run and the WILMINGTON GETTY would have drifted aft with the tide and away from the PONCE DE LEON.

The WILMINGTON GETTY was damaged only at her bow and by merely drifting aft forty to fifty feet, she would have averted the collision.

It is clear that the WILMINGTON GETTY contributed to the collision and should be found solely at fault.

4. (a) The exhibits each party now expect to offer at the trial are those identified below in Paragraph 4(b). Should any party hereafter decide to offer additional exhibits, prompt notice of that fact shall be given to each other party and to the court by serving and filing a supplemental pre-trial memorandum. The supplemental pre-trial memorandum may be in a short form statement filed with the trial judge. It shall set forth the reasons why the exhibit was not heretofore identified. No exhibit may be offered at trial unless identified in this pre-trial order or in a supplemental pre-trial memorandum.

4. (b) The parties agree that the following documents which were marked for identification or which are otherwise identified in the order are authentic and may be received in evidence. (Each party reserving the right to object to the materiality or relevancy of each document and each party reserves the right to object to all or a portion of each document on the ground that it is inadmissible under the Hearsay Rule.)

Plaintiff Getty Oil Company (Eastern Operations), Inc.'s Exhibits:

(1) All exhibits marked at the pre-trial deposition of Captain Jens G. Brixen, master of the SS WILMINGTON GETTY.

(2) All exhibits marked at the pre-trial deposition of George Farago, third mate and watch officer of the WILMINGTON GETTY.

(3) All exhibits marked at the pre-trial deposition of Roger J. Meade, master of the SS PONCE DE LEON.

(4) Photographs of damage of the PONCE DE LEON.

Defendants' Sun Leasing Co.'s and Transamerican Trailer Transport, Inc.'s Exhibits:

(1) All exhibits marked at the pre-trial deposition of Captain Jens G. Brixen, master of the SS WILMINGTON GETTY.

(2) All exhibits marked at the pre-trial deposition of George Farago, third mate and watch officer of the WILMINGTON GETTY.

(3) All exhibits marked at the pre-trial deposition of Roger J. Meade, master of the SS PONCE DE LEON.

5. The parties agree that the witnesses each party now intends to call, along with the specialties of the experts to be called are those listed below. Should any party hereafter decide to call any additional witnesses, prompt notice of the identity shall be given to each party and to the court by serving and filing a supplemental pre-trial memorandum. The supplemental pre-trial memorandum may be in short form statement filed with the judge. It shall set forth the reasons why the witness was not theretofore identified. No witness may be called at trial unless identified in a pre-trial memorandum.

Plaintiff Getty Oil Company (Eastern Operations), Inc. designates the following witnesses whom it may call at trial or whose depositions (where depositions have been taken) may be read in whole or in part at the trial:

(1) Captain Jens J. Brixen, master of the WILMINGTON GETTY.

(2) Captain Roger J. Meade, master of the PONCE DE LEON.

(3) George Farago, watch officer and third made of the WILMINGTON GETTY.

(4) One or two expert witnesses on ship handling and navigation.

Defendants' Sun Leasing Co. and Transamerican Trailer Transport, Inc. designate the following witnesses:

(1) Captain Jens J. Brixen, master of the WILMINGTON GETTY.

(2) Captain Roger J. Meade, master of the PONCE DE LEON.

(3) George Farago, watch officer and third mate of the WILMINGTON GETTY.

(4) William Benson, third mate and watch officer of the PONCE DE LEON.

(5) Sandy Hook Pilot aboard SS SEALAND BOSTON.

(6) One or two expert witnesses on piloting and ship handling.

6. The parties agree to limit the number of expert witnesses to a maximum of two each on liability issues.

7. The determination of damages is deferred.

8. The parties also agree on the following matters.

The expect at this time that the trial will require approximately two days on the issues of liability.

9. The issues to be tried are:

(1) Was the collision between the PONCE DE LEON and the anchored WILMINGTON GETTY caused or contributed to by the fault or negligence of the master or any other officer or crewmen on the PONCE DE LEON for whom defendants are responsible?

(2) Was the collision between the PONCE DE LEON and the WILMINGTON GETTY caused or contributed to by the fault or negligence of the master or the officers or crewmen of the anchored WILMINGTON GETTY?

Dated: New York, N. Y.
January 31 1975

SO ORDERED

L W Pierce

LAWRENCE W. PIERCE
U.S.D.J.

Consented to

Thomas J. Barlow Jr.

KIRLIN, CAMPBELL & KEATING
Attorneys for Plaintiff
Getty Oil Company (Eastern Operations), Inc.
120 Broadway
New York, N. Y. 10005

32

BY:

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GUUFFRA
Attorneys for Defendants
Sun Leasing Co. and
Transamerican Trailer Transport, Inc.
576 Fifth Avenue
New York, N. Y. 10036

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

33

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

-against-

SS PONCE DE LEON, her engines, tackle, etc., Sun Leasing Co. and Transamerican Trailer Transport, Inc.

Defendants.

73 Civil 3480 (RHL)

IN ADMIRALTY

PLAINTIFF'S PROPOSED FINDINGS OF FACT

A. The parties have stipulated the facts stated in paragraphs 1-6 (T. 33-35*).

(1) This is a case of admiralty and maritime jurisdiction.

(2) Getty Oil Company (Eastern Operations), Inc. was and still is a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at 660 Madison Avenue, New York, N. Y. and was and still is the owner and operator of the steam tanker WILMINGTON GETTY. The WILMINGTON GETTY is a steam tanker 13,659 gross tons, 583.5 feet in overall length and 74.2 feet in breadth. On May 10, 1973 she was laden with a cargo of about 20,000 tons of heating oil and gasoline and her drafts were 31 feet 9 inches forward and 31 feet 11 inches aft. She was engaged on a voyage from Delaware City, Delaware bound for Bayonne, New Jersey.

(3) Sun Leasing Co. and Transamerican Trailer Transport, Inc., defendants, were and still are domestic corporations organized and existing under and by virtue of the laws of one of

90

* Pages pre-fixed with "T" refer to the Trial Transcript.

the states of the United States with offices and places of business at 358 St. Marks Place, Staten Island, New York and were and still are the owner and operator of the steamship PONCE DE LEON. The PONCE DE LEON is a steamship of 15,134 gross tons, 700 feet in overall length, 92.2 feet in breadth. The distance from her bridge to her bow is approximately 350 feet. Her steam turbine engines are of 32,000 horsepower. At the material times she was laden with a cargo of trailers to drafts of 21 feet 8 inches forward and 24 feet 6 inches aft. Her displacement was thus approximately 19,400 tons. She was engaged on a voyage from San Juan, Puerto Rico to the Transamerican Trailer Transport Terminal, Staten Island, New York.

(4) On the morning of May 10, 1973 the WILMINGTON GETTY arrived in New York Harbor and proceeded up Ambrose Channel. The weather conditions included dense fog. As the WILMINGTON GETTY proceeded up the channel, her radar indicated that the various anchorage areas were crowded and her master decided to anchor off Norton Point, Brooklyn; and at approximately 0856 hours, the WILMINGTON GETTY anchored off Norton Point.

(5) On May 10, 1973 as the PONCE DE LEON transited Ambrose Channel in fog, she was advised that the tugs assigned to assist her into her berth were fog bound and would be unable to assist her for an indefinite period of time. The master of the PONCE DE LEON thereupon decided to anchor in Gravesend Bay Anchorage Area No. 25.

(6) At approximately 1314 hours the PONCE DE LEON collided with the anchored WILMINGTON GETTY, causing damage to the WILMINGTON GETTY's bow, and the PONCE DE LEON's port side.

(7) As a result of this collision, plaintiff, in August 1973, commenced suit against defendant claiming damages of approximately $180,000. Shortly thereafter defendant filed its answer with a counterclaim against plaintiff claiming damages of approximately $350,000.

B. Plaintiff proposes that the following additional facts be found by this court:

The Navigation of the PONCE DE LEON

Preliminary Comment

Apart from her numerous violations of statute, there is a presumption of negligence against the PONCE DE LEON for colliding with the anchored and stationary WILMINGTON GETTY. The burden of proof thus shifted to the PONCE DE LEON to establish that her own faults could not have contributed to the collision.

The defendant placed an alleged expert on the stand, Captain Dervin, but the defendant not only made no attempt to use him to try to justify the navigation of the PONCE DE LEON - the defendant objected to virtually all questions put to Captain Dervin by plaintiff regarding the PONCE DE LEON's navigation.

Plaintiff submits that this is an admission that the PONCE DE LEON's navigation was so grossly negligent as to be wholly indefensible. Plaintiff submits the facts show that the PONCE DE LEON's gross negligence fully accounts for and solely caused the collision.

(8) At all material times, dense fog prevailed and the visibility was practically nil.

Comment

Captain Meade of the PONCE DE LEON described the visibility as "zero," and testified that he could see the men on his own bow, 350 feet from his bridge, "with difficulty." (Ex. 16, p. 18.) The PONCE DE LEON's Second Mate, Ahorrio, who was stationed on her bow, testified the maximum visibility was 30 yards, and that he first saw the WILMINGTON GETTY before collision at a distance of 25-30 yards. (Ex. 30, pp. 3, 5.)

(9) The current in Ambrose Channel was flooding with a velocity of approximately .5 knots at the material times. (Brixen Ex. 10, pp. 16, 17; Meade Ex. 16, p. 40.)

(10) The PONCE DE LEON was equipped with two radars, both of which were in operation at all material times. (Meade Ex. 16, p. 20; Ex. 26.)

(11) While navigating up Ambrose Channel, the PONCE DE LEON's master learned by radio that his tugs were fogbound and thus the PONCE DE LEON could not dock on schedule. He thereupon decided to leave the channel and anchor in Anchorage Area 25 (shown on Chart #540, Ex's. 2 and 21) and wait for the fog to lift. But he did not know that Anchorage Area 25 was closed to navigation by Local Notice to Mariners #10 dated March 7, 1973. (Ex. 14; Ex. 16, pp. 18, 58.)

(12) Anchorage Areas #25 and #49 C as shown on Chart #540 cover an area approximately 1.5 miles in length and .5 miles in width (per measurement on the chart). As clearly shown on the chart, Anchorage Areas #25 and #49 C may be entered at any point along their length or width. The only limiting factors on an entry point would be the presence of other ships in or near the anchorage areas and the depth of water necessary for a particular ship. Obviously, if other ships are observed in or near the anchorage area (especially if observed by radar in dense fog) such ships should be passed at a sufficiently safe distance so as to avoid any risk of collision.

Comment

Captain Dervin, at T. 47 testified that the WILMINGTON GETTY was anchored just outside the channel:

> "thereby obstructing the entrance to that Gravesend Bay anchorage by any other vessel. And in an area of that anchorage, the ships that came in there pass Buoy 18, they have to go to the right in order to get into the anchorage. And if he [the WILMINGTON GETTY] is there in the way, I mean, what can you do?" (Empnasis added.)

Captain Dervin seems to be implying that ships which usually turn out of the channel near Buoy 18 to enter the anchorage may blindly do so - ignoring the presence of a ship such as the WILMINGTON GETTY which he admitted was anchored outside the channel. Such testimony is incredible on the part of an alleged expert on safe navigation procedures. By proper use of radar, vessels such as the PONCE DE LEON have the means and the duty to timely detect the presence of other ships and to keep well clear of all other ships. The anchorage does not "have" to be entered at any one point only. But if it is going to be entered - obviously it must be entered at a safe point with respect to vessels already in or near the anchorage area. The proper standard of care in choosing an anchorage is shown in the action of Captain Brixen of the WILMINGTON GETTY who also initially intended to use Anchorage Area #25. However, upon observing on the WILMINGTON GETTY's radar a number of radar contacts in the vicinity of Anchorage Area 25, two of which later were identified as dredges (Brixen, Ex. A, p. 5), Captain Brixen decided to avoid that area altogether, and he anchored the WILMINGTON GETTY about 300 yards south of the Anchorage Area 25. (Brixen, Ex. 10, pp. 32-33.) The WILMINGTON GETTY's master made proper use of his radar to avoid crowding vessels in the anchorage area. Had the PONCE DE LEON's master taken similar reasonable precautions, this collision could not have occurred.

(13) As the PONCE DE LEON proceeded up Ambrose Channel her master, who then had the PONCE DE LEON's radar set on the two mile scale, first observed the WILMINGTON GETTY at the extreme edge of the two mile scale at a distance of between 1.5 and 2 miles from the PONCE DE LEON. (Meade, Ex. 16, pp. 22-23, 46.) The PONCE DE LEON was below or south of Buoy 18 at the time of first radar sight of the WILMINGTON GETTY. (Meade, Ex. 16, pp. 24.)

(14) As the PONCE DE LEON proceeded up Ambrose Channel she was following a ship ahead of her, allegedly the SEALAND BOSTON. The PONCE DE LEON maintained a distance of approximately 1 mile behind the ship ahead of her. Captain Meade testified he saw the SEALAND BOSTON on radar approach the WILMINGTON GETTY and:

> "The SEALAND BOSTON had apparently slowed down and was waiting for tugs and whatever. For a period of time I saw one large blip up there. Subsequently that blip separated into two blips; one being the SEALAND BOSTON and the other turning out to be the WILMINGTON GETTY ..." (Ex. 16, p. 79.)

Comment

The objections of defense counsel to questions posed to Captain Dervin (T. 97, line 19 and T. 101, line 13.) on cross-examination were based on defense counsel's incorrect recollection of the testimony. The actual facts clearly show that after Captain Meade first sighted the radar contact of the WILMINGTON GETTY at a distance of 1.5 - 2 miles - he apparently had no difficulty in keeping track of both the WILMINGTON GETTY and the ship proceeding about 1 mile ahead of the PONCE DE LEON in the channel - as was his duty. Defense counsel's incorrect objections concerning when the master of the PONCE DE LEON sighted the WILMINGTON GETTY, unfortunately, served only to distract the court and plaintiff's counsel from the issues on cross-examination. Certainly the court does not wish to engage in extended discussions of what the accurate facts are especially in the middle of cross-examination of an expert witness. We submit that counsel has a duty to be sufficiently familiar with the facts established in the case to avoid interjecting incorrect "recollections" of the testimony into the case - which could mislead the court.

Further Comment

Radar because of technical characteristics, has a phenomenon that at times when two objects are a certain distance apart they may merge together and appear as one blip to the observer looking at a radar scope. The defendant did not provide the court with any expert testimony as to the minimum distance at which two ships (such as the WILMINGTON GETTY and the ship alleged to be the SEALAND BOSTON) would appear to merge into one blip on the PONCE DE LEON's radar scope. Defendant's counsel has argued in his Pre-Trial Memorandum, page 2, that the WILMINGTON GETTY was "extremely close to the SEALAND BOSTON" and can be expected to continue making said argument. The distance between the WILMINGTON GETTY and the ship which appeared to be merged with her, as seen on the PONCE DE LEON's radar, is unknown. However, obviously it was a safe distance because the other vessel proceeding up the channel ahead of the PONCE DE LEON passed clear of the WILMINGTON GETTY without any risk of collision in any event.

(15) The time of the first radar sighting of the WILMINGTON GETTY was not recorded and Captain Meade's estimate that the first sighting occurred at about 5 minutes before collision (Ex. 16, p. 23) is patently in error, as is Captain Meade's estimate that the PONCE DE LEON's speed was approximately 5, 6 knots when he first sighted the WILMINGTON GETTY on radar. (Meade, Ex. 16, p. 26.) The PONCE DE LEON's speed up the channel was 10.5-11 knots and her master first sighted the WILMINGTON GETTY 8 to 11 minutes before the collision.

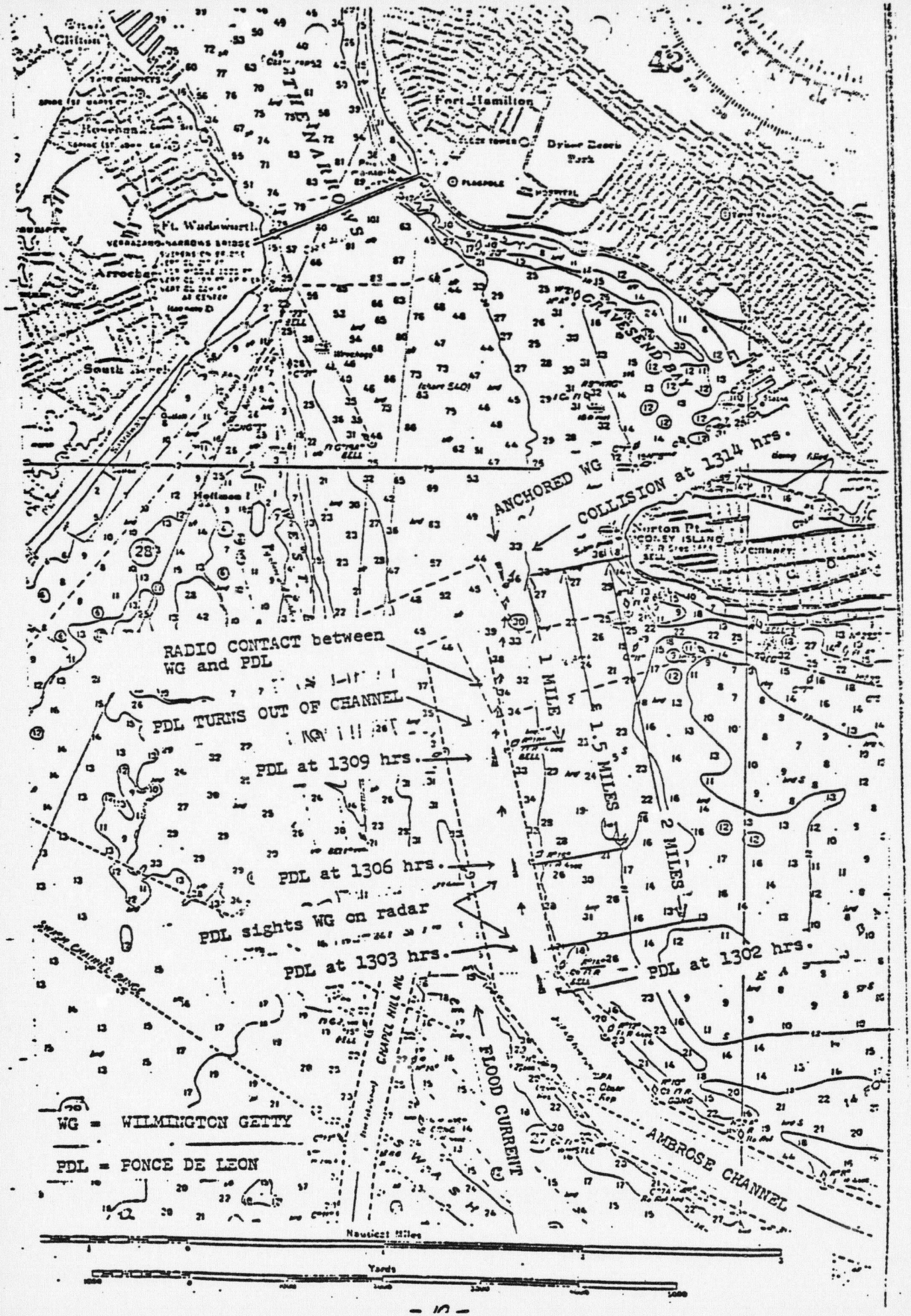
Comment

As shown on the attached copy of a portion of Chart #369 (similar to Ex. 3), when the PONCE DE LEON was 2 miles from the anchored WILMINGTON GETTY, the PONCE DE LEON must have been very close to Buoy R-14, which her bell book (Ex. 20) and her log (Ex. 18) show was passed at 1302 hours. (See also Meade, Ex. 16, p. 27.) The same records show that Buoy 18 was passed at 1309 hours. Captain Meade testified the PONCE DE LEON's engine setting was Half Ahead during the interval from 1302-1309 hours (Ex. 16, p. 27) and that Half Ahead would produce a speed of about 10 knots. The actual speed over the ground, by computations of time, speed and distance, based on the PONCE DE LEON's records [a typical accurate method in navigation for calculating speed (Ex. 16, p. 74)] was approximately 10.5 - 11 knots (Ex. 16, pp. 27-29). [The excess over 10 knots was probably caused by the current.] Clearly the PONCE DE LEON's speed was approximately double the speed Meade estimated. Meade admitted his estimate of 5 knots was low. (Ex. 16, p. 29.)

Captain Meade and his officers all testified that at the material times the PONCE DE LEON was going 5 knots or less up Ambrose Channel. (Meade Ex. 16, pp. 26, 29; Potocka, 2 knots, Ex. 28, p. 6; Benson, 5 knots, Ex. 29, p. 5.) The grossly inaccurate estimates of the PONCE DE LEON's speed are either deliberate fabrications to avoid charges of immoderate speed in fog, or are based on woefully inaccurate knowledge of the PONCE DE LEON's characteristics - which may have directly contributed to the collision. Captain Meade's credibility is greatly impaired by such testimony.

With the PONCE DE LEON's speed established at 10.5 - 11 knots, her location at any point between Buoys 14 and 18 can be established with reasonable accuracy. At a speed of 10.5 - 11 knots it would take approximately one minute to cover the distance of approximately .13 miles from Buoy 14 to the point where the PONCE DE LEON would have been 2 miles from the WILMINGTON GETTY. And it would have taken approximately 3 minutes to cover the .5 mile distance between the points where the PONCE DE LEON was 2 miles (approximately 1303 hours) and 1.5 miles (approximately 1306 hours) from the WILMINGTON GETTY.

Thus the first radar sighting by the PONCE DE LEON's master of the WILMINGTON GETTY at 1.5 to 2 miles must have been between approximately 1303 and 1306 hours - and the PONCE DE LEON's master had the WILMINGTON GETTY under radar observation for between approximately 8 and 11 minutes before the collision which occurred at 1314 hours - and not the 5 minutes Meade estimated. The WILMINGTON GETTY was also under radar observation by the PONCE DE LEON for approximately 3 to 6 minutes before the PONCE DE LEON turned out of the channel at approximately 1309 hours.


ANCHORED WG
COLLISION at 1314 hrs.
RADIO CONTACT between WG and PDL
PDL TURNS OUT OF CHANNEL
PDL at 1309 hrs.
PDL at 1306 hrs.
PDL sights WG on radar
PDL at 1303 hrs.
PDL at 1302 hrs.
1 MILE
1.5 MILES
2 MILES
FLOOD CURRENT
AMBROSE CHANNEL
CHAPEL HILL NK
WG = WILMINGTON GETTY
PDL = PONCE DE LEON
Nautical Miles
Yards

(16) Before passing Buoy 18, the PONCE DE LEON's master estimated by radar that the WILMINGTON GETTY was approximately .5 to .7 miles off Norton's Point. He observed that the WILMINGTON GETTY was to the east or inside the line of buoys marking Ambrose Channel (Meade Ex. 16, pp. 24, 46). Captain Meade thus knew the WILMINGTON GETTY was outside the main shipping channel at least with respect to vessels proceeding through Ambrose Channel and The Narrows.

(17) The master of the PONCE DE LEON testified he "more or less" watched the WILMINGTON GETTY continuously on the PONCE DE LEON's radar after he first sighted the WILMINGTON GETTY. But he did not know whether the WILMINGTON GETTY was moving or anchored - because he made no manual plot of the WILMINGTON GETTY. He claimed he made a "mental plot" of the WILMINGTON GETTY and assumed she was a slow moving vessel. (Meade, Ex. 16, pp. 25, 26.) At p. 51 (Ex. 16) Meade testified: "If I had plotted I would think the plot would have shown that either he was stationary or underway, very slow. At those slow speeds, there is very little difference." Captain Meade made no attempt to determine the distance the PONCE DE LEON would pass off the WILMINGTON GETTY, the closest point of approach to the WILMINGTON GETTY. (Meade, Ex. 16, p. 39.)

(18) Those on the PONCE DE LEON kept no continuous radar watch on the WILMINGTON GETTY and made no attempt to plot - whatsoever. There was no reasonable basis for Captain Meade to make any assumptions from radar of what the WILMINGTON GETTY might be doing.

(19) At approximately 1309 hours, shortly after the PONCE DE LEON passed Buoy 18, the PONCE DE LEON's course was changed to the right as she left the channel to go to anchor.

(20) The PONCE DE LEON's master testified he began attempting to contact the WILMINGTON GETTY by radio before the PONCE DE LEON reached Buoy 18, (Ex. 16, p. 42) when the PONCE DE LEON was 1.5 miles from the WILMINGTON GETTY. (Ex. 16, p. 46.) The PONCE DE LEON's master alleges he called "vessel underway off Norton's Point" (Emphasis added), and requested his intentions. (Ex. 16, p. 35.) The PONCE DE LEON's master testified he repeated the radio call and received a reply from the WILMINGTON GETTY in from 1 to 2 minutes, and learned the WILMINGTON GETTY was at anchor, and the PONCE DE LEON was then .5 miles from the WILMINGTON GETTY - which was after the PONCE DE LEON passed north of Buoy 18. (Ex. 16, p. 42.)

(21) The timing and content of the PONCE DE LEON's radio call to the WILMINGTON GETTY as testified to by the PONCE DE LEON's master (regarding the alleged call before Buoy 18) are discredited by the testimony of her watch officer Benson who was in the wheelhouse of the PONCE DE LEON with Captain Meade. Benson testified (Ex. 29, pp. 4-5) that he first noticed the WILMINGTON GETTY after passing Buoy 18, when the PONCE DE LEON was .6 miles from the collision point. He notified Captain Meade, who "used the radio on [Channel] 13 to contact this ship to verify that it was at anchor there ..." (Emphasis added.) Benson makes no mention of the PONCE DE LEON making any other radio calls to the WILMINGTON GETTY - particularly before passing Buoy 18. More significantly, Benson clearly indicates by the word "verify" that Captain Meade already knew the WILMINGTON GETTY was at anchor when Meade communicated with the WILMINGTON GETTY. Captain Meade could have had that information before calling the WILMINGTON GETTY because other vessels had commented on the radio on Channel 13 that there was a vessel anchored off Norton's Point. (Farago, watch officer of the WILMINGTON GETTY,

Ex. 1, p. 17; Ex. 7, lines 8-9.) Farago did not hear any calls from the PONCE DE LEON to a ship off Norton Point (Ex. 1, pp. 44-45.) According to Farago, he interrupted a radio conversation between the PONCE DE LEON and an unidentified third vessel concerning a vessel at anchor off Norton's Point. Farago then told the PONCE DE LEON that the WILMINGTON GETTY was the ship at anchor off Norton Point. (Ex. 1, pp. 18-19, 34-37.) [Captain Meade claimed he did not recall a conversation with a third vessel concerning a ship at anchor off Norton Point - but he did not deny the matter (Ex. 16, p. 34).] The PONCE DE LEON was .6 miles from the WILMINGTON GETTY at the time of the first radio communication. (Ex. 1, p. 21; reference Ex. 3.) While there is a minor dispute at who initiated the radio communications between the WILMINGTON GETTY and the PONCE DE LEON, there is no dispute that they first spoke to each other <u>after</u> the PONCE DE LEON turned out of the channel and that the PONCE DE LEON was .5 or 6 miles from the WILMINGTON GETTY when the WILMINGTON GETTY stated she was at anchor off Norton Point, and when the PONCE DE LEON informed the WILMINGTON GETTY that the PONCE DE LEON would pass between the WILMINGTON GETTY and Norton Point. (Ex. 16, p. 42, Ex. 1, p. 19.) Further, both Farago and Meade estimate that these communications occurred approximately 3-5 minutes before the collision. (Ex. 16, p. 35; Ex. 1, pp. 21-22.)

(22) After the PONCE DE LEON passed Buoy 18 and turned out of the channel, her rudder movements, courses and speeds are uncertain. Meade could not recall his initial rudder orders. (Ex. 16, p. 38.) He did not know the PONCE DE LEON's compass heading when he learned the WILMINGTON GETTY was anchored - the PONCE DE LEON was then .5 miles from the WILMINGTON GETTY.

(Ex. 16, p. 84.) He did not know the PONCE DE LEON's compass heading at collision. (Ex. 16, p. 45.) The helmsman, who may have this information never appeared for deposition, although demanded by plaintiff (Ex. 17), and he never appeared at trial. Captain Meade estimated the PONCE DE LEON's speed at collision as 5 knots. (Ex. 16, p. 32.) This estimate is grossly inaccurate. The PONCE DE LEON's engines were set on Half Ahead from 1300 to 1311. (Ex. 20.) As previously established, the PONCE DE LEON proceeded at a speed of 10.5 - 11 knots between Buoys 14 and 18. Her engine speed was ordered reduced to Dead Slow Ahead at 1311 hours (Ex. 20) which would ultimately produce a speed of 3 - 4 knots (Ex. 16, p. 13) but obviously considering her 19,400 ton displacement (Finding #3) she would take some time to reduce her speed. (Ex. 16, p. 38-39.) (Defendant has never established how much time would be necessary.) However, referring to Ex. 21, the distance from Buoy 18 (which was passed at 1309 hours) to the collision position (at 1314 hours) is one mile. By covering that distance in five minutes her average speed was approximately 12 knots. (Ex. 16, p. 32-33.) He admitted this was not a "low speed." (Ex. 16, p. 39.) These additional grossly erroneous "estimates" further impair Captain Meade's credibility.

(23) As the PONCE DE LEON approached the WILMINGTON GETTY, the officers of the PONCE DE LEON - Potocka, Benson and Ahorrio - all testified they heard fog signals from the WILMINGTON GETTY before visual sight of her and that Captain Meade was so informed. (Potocka, Ex. 28, p. 5; Benson Ex. 29, p. 6; Ahorrio Ex. 30, p. 4.) Captain Meade denied he ever heard the WILMINGTON GETTY's fog signals or that they were ever reported to him. (Meade Ex. 16, pp. 43, 44.)

Comment

The weight of evidence is that the WILMINGTON GETTY's fog signals were heard by those on the PONCE DE LEON and they were reported to Captain Meade. Captain Meade's "failure of memory" may be related to his knowledge that under Article 16 upon hearing the WILMINGTON GETTY's fog signals he was obliged to stop the PONCE DE LEON's engines and navigate with caution. (Ex. 16, p. 45.) Captain Meade failed to do this and may not wish to admit this fault.

(24) At no time prior to the collision did the PONCE DE LEON stop or reverse her engines. (Meade Ex. 16, p. 45.) Nor did she navigate with caution.

Comment

This is a clear violation of Article 16.

(25) The master of the PONCE DE LEON visually sighted the WILMINGTON GETTY "just seconds" before collision. His officers first sighted the WILMINGTON GETTY at very close range variously estimated at between 25 and 100 feet. (Meade Ex. 16, p. 48; Potocka Ex. 28, p. 3; Benson Ex. 29, p. 3; Ahorrio Ex. 30, p. 3.)

(26) Captain Meade admitted that at the time of visually sighting the WILMINGTON GETTY, if he had backed the PONCE DE LEON's engines full speed astern, he would not have had time to stop the PONCE DE LEON before collision. In other words, because of his speed, he could not stop in the distance of his visibility in the dense fog. (Meade Ex. 16, pp. 48, 49.)

Comment

Admittedly the PONCE DE LEON proceeded at an immoderate speed in violation of Article 16, because she could not stop in the distance of visibility in time to avoid collision.

Further Comment

Captain Meade alleges that the PONCE DE LEON's speed was governed by a duty to maintain his relative position between the ships in front and behind him while proceeding up Ambrose Channel. (Ex. 16, p. 60.) Captain Dervin, defendant's expert, although recognizing the legal requirements to go at a moderate speed, the speed at which a vessel could stop in time to avoid collision (T. 91) testified:

> "With the modern technique and modern fast moving and large ships, those rules unfortunately are not always in effect in a ship because if one goes up the channel and there is not only one ship that goes up the channel, there are several ships following each other and if somebody starts moving at 2 or 3 or 4 knots because the weather is bad, everybody will be at a standstill.
>
> Q. Are you saying just because someone else goes an excessive speed, something immoderate, you have to do it also?
>
> A. No. you don't, but it is the common practice." (Emphasis added.)

Captain Dervin's testimony we submit is incredible for an alleged expert on safe navigation procedures. Alleged customs which violate the law - especially a law so clear as Article 16 concerning moderate speed in fog - have always been condemned by the courts. If the fog is so thick that it is unsafe to be moving - even at the slowest speed necessary for control - the courts have held the ships should stop. Ambrose Channel, in the vicinity of Buoys 14 through 18 is approximately 650 yards or 1,950 feet in width. All vessels proceeding inbound with the PONCE DE LEON were required to be equipped with radio. And presumably considering their high speeds, they must have been equipped with radar also. In the situation, defendant advanced no reasonable grounds why the PONCE DE LEON by a simple radio

communication could not have informed the other inbound ships of her intention to slow and/or stop prior to leaving the channel. The other inbound vessels would have ample warning of the PONCE DE LEON's movements, and by properly using their radars, there is no reason why they could not navigate safely around the PONCE DE LEON. Clearly the excessive speed of the other ships cannot be used to justify the PONCE DE LEON's grossly negligent navigation.

(27) The photographs of the PONCE DE LEON (Ex. 27) confirm the relatively high speed of the PONCE DE LEON. Her port side raked along the WILMINGTON GETTY's bow.

(28) After passing Buoy 18, Captain Meade alleges he was observing the PONCE DE LEON's radar scope continuously except for one brief time when he stepped out on the PONCE DE LEON's port wing of the bridge to attempt to see the WILMINGTON GETTY or the other ship visually. (Ex. 16, p. 80.) He claims he saw the WILMINGTON GETTY clearly on radar and realized the PONCE DE LEON was getting into a close situation and he was "trying" to avoid her. (Ex. 16, pp. 44, 45.) After he learned the WILMINGTON GETTY was anchored he knew she could not move in a short time. (Ex. 16, p. 45.) He considered it the PONCE DE LEON's duty alone to avoid collision and he had "no question" there was nothing the WILMINGTON GETTY could do to avoid collision. (Ex. 16, p. 100.) Nothing in the record shows the PONCE DE LEON ever informed the WILMINGTON GETTY that the PONCE DE LEON alone <u>could not</u> or <u>would not</u> avoid the WILMINGTON GETTY <u>nor</u> did the PONCE DE LEON ever request the WILMINGTON GETTY to try any avoiding action. Instead the PONCE DE LEON's master informed the WILMINGTON GETTY that the PONCE DE LEON <u>would</u> pass clear of the WILMINGTON GETTY.

(29) Even defendant's expert Captain Dervin had no doubt that the PONCE DE LEON should have avoided the anchored WILMINGTON GETTY. Captain Dervin would watch his radar carefully and make sure the PONCE DE LEON kept clear of the WILMINGTON GETTY. (T. 105-106.) [See also Fonda, T. 136-137.] And if there was a half mile distance, Captain Dervin would think there was enough room for the PONCE DE LEON to avoid the WILMINGTON GETTY. (T. 106.)

(30) No reason has been shown why the PONCE DE LEON, with two radars available could not avoid the WILMINGTON GETTY considering all the circumstances. The current may have hindered the PONCE DE LEON's last minute nameuvers. But the current was a factor of which the PONCE DE LEON's master was aware and which he could have and should have taken into account. The only reasonable explanation for the collision is that the PONCE DE LEON's master did not make proper use of his radar before or after turning out of the channel, and he needlessly attempted to pass too close to the WILMINGTON GETTY.

(31) If the PONCE DE LEON had remained on course up the channel until after she passed the PONCE DE LEON's position - the PONCE DE LEON would have passed the WILMINGTON GETTY by 375 yards. (Ex. 16, pp. 82, 94.)

(32) In summary, the evidence is abundantly clear that the master of the PONCE DE LEON was well aware of the presence of the WILMINGTON GETTY for 8 to 11 minutes before collision and for at least 3 - 6 minutes before the PONCE DE LEON reached Buoy 18 and turned out of the channel - toward the WILMINGTON GETTY. Considering all the circumstances, the PONCE DE LEON cannot justifiably claim to have been surprised or prejudiced in any way by the fact of where the WILMINGTON GETTY was anchored.

(33) I find that the action of the PONCE DE LEON in turning out of the channel toward the WILMINGTON GETTY constituted gross negligence. The WILMINGTON GETTY was forward of the PONCE DE LEON's starboard bow and close by, and if those on the PONCE DE LEON did not know what the WILMINGTON GETTY was doing - the only reasonable and prudent actions for the PONCE DE LEON were to continue up the channel past the WILMINGTON GETTY or to stop and take time for a plot, or at least stop until radio communications were established. However, it is probable that the PONCE DE LEON's master knew the WILMINGTON GETTY was at anchor before the PONCE DE LEON turned out of the channel. (Proposed Finding No. 21.) But regardless of whether the PONCE DE LEON's master learned the WILMINGTON GETTY was anchored before or after the PONCE DE LEON turned out of the channel - proper and reasonable use of the PONCE DE LEON's two radars would have easily permitted her to avoid the WILMINGTON GETTY. I thus find the PONCE DE LEON failed to make proper use of her radar.

(34) I find that the PONCE DE LEON's gross negligence in turning out of the channel toward the WILMINGTON GETTY was compounded by her immoderate speed. Admittedly the PONCE DE LEON was going so fast that she could not be stopped in the distance of visibility after visually sighting the WILMINGTON GETTY just seconds before collision. This is a clear violation of Article 16, 33 U.S.C. § 192, which directly contributed to the collision. I find that the PONCE DE LEON's gross negligence in striking an anchored ship solely caused the collision.

## The Actions of The WILMINGTON GETTY

### Preliminary Comment

A properly anchored vessel is entitled to the highest degree of privilege, and considering the PONCE DE LEON's gross negligence, her burden of proving negligence in any degree on the WILMINGTON GETTY's part is more than ordinarily heavy.

(35) At all times after the WILMINGTON GETTY anchored, a seaman was placed on her bow to ring her bell forward for 5 seconds at intervals not exceeding 1 minute, the proper fog signal for a vessel at anchor under the U. S. Inland Rules, Article 15(d) 33 U.S.C.A. § 191(d). A licensed mate was stationed on her bridge to monitor her bridge-to-bridge radio telephone which was set on Channel 13. This action was not specifically required by the Bridge-to-Bridge Radio Telephone Act 33 U.S.C.A. § 1201 et seq. since the WILMINGTON GETTY was anchored well clear of the channel and she was not navigating, it was a reasonable extra precaution for the circumstances. The mate also monitored her radar which was set on the 3 mile scale. Frequent checks were made to verify that the WILMINGTON GETTY was maintaining her position at anchor. (Farago, Ex. 1, pp. 14, 15; Brixen,Ex. 10, pp. 11, 22-23.) The WILMINGTON GETTY's anchorage position is shown on the charts, Ex's. 2 and 3.

(36) At approximately 1255 hours on May 12, 1973, the WILMINGTON GETTY completed her swing to the flood current, and thereafter she was heading approximately 160° - 168°, parallel to Ambrose Channel. (Farago, Ex. 1, pp. 12-14; Brixen, Ex. 10, p. 16.) No part of the WILMINGTON GETTY extended into the channel.

(37) The WILMINGTON GETTY's watch officer estimated the visibility at about 200 yards. However, the distance of visibility varied at times. (Ex. 1, p. 12, 71.)

(38) During the course of the day numerous ships proceeding up and down Ambrose Channel passed well clear to the west of the anchored WILMINGTON GETTY. The WILMINGTON GETTY's watch officer did not visually sight any of the vessels, although at one point before the collision he sighted the shadow of one vessel. He did not measure the distance to that ship by radar. (Farago, Ex. 1, pp. 15, 16.) Clearly the anchored WILMINGTON GETTY posed no navigational danger for any vessel remaining on a course proceeding up or down Ambrose Channel, or any vessel complying with the fog regulations.

(39) At approximately 1308 hours the WILMINGTON GETTY's watch officer alertly observed on radar a ship turning right, out of the channel, at Buoy 18. (Ex. 1, p. 18; Ex. 7, line 9.)

Comment

The times recorded by the two ships appear to differ by about one minute. For example, as previously established the PONCE DE LEON according to her times passed Buoy 18 at 1309 hours. Thus one minute should be added to the WILMINGTON GETTY's times to conform approximately to the PONCE DE LEON's times.

(40) As soon as the WILMINGTON GETTY's mate observed on his radar that the PONCE DE LEON had turned out of the channel, towards the WILMINGTON GETTY, he immediately called the PONCE DE LEON by radio and warned the PONCE DE LEON twice that the WILMINGTON GETTY was anchored. The PONCE DE LEON's master informed the WILMINGTON GETTY that the PONCE DE LEON would pass between the anchored WILMINGTON GETTY and Norton Point. The PONCE DE LEON was then approximately .6 miles from the WILMINGTON GETTY. (Ex. 1, pp. 18-22, 34-37; Ex. 3.)

(41) The WILMINGTON GETTY's mate estimated the radio conversations occurred approximately 5 minutes before the collision. (Ex. 1, pp. 21-22.) But probably they occurred closer to 3 minutes before the collision.

The distance between Buoy 18 and the collision position is approximately one mile, and the time interval from Buoy 18 to the collision position is 5 minutes. The PONCE DE LEON had covered part of that distance (.4 miles) before the radio communications were completed. At her speed of approximately 12 knots (Proposed Finding No. 22) she would cover .4 miles in 2 minutes - leaving approximately 3 minutes from the radio communications to collision.

(42) After the PONCE DE LEON's radio advice that the PONCE DE LEON would keep clear of the anchored WILMINGTON GETTY, the WILMINGTON GETTY's mate continued to observe his radar. It appeared to him that the PONCE DE LEON would pass clear ahead of the WILMINGTON GETTY. He stated:

> "Continued to track vessel [PONCE DE LEON], radar showing a very fine picture of vessel clearing slightly ahead of me." (Ex. 7, lines 18-19; see also Ex. 1, p. 22; Ex. B, p. 18.)

(43) Very shortly ("seconds") before collision the WILMINGTON GETTY's mate observed the PONCE DE LEON at a distance estimated at approximately 300 feet from WILMINGTON GETTY's starboard bow. (Ex. 1, pp. 23, 72.) [His estimate of the distance of visibility was approximately 200 yards. But the WILMINGTON GETTY's bridge is approximately 300 feet from her bow (Ex. 1, p. 29.) Thus the PONCE DE LEON was estimated at 300 feet from the WILMINGTON GETTY's bow.] The PONCE DE LEON was then slightly ahead of the WILMINGTON GETTY. The WILMINGTON GETTY's mate sounded the danger signal of 4 short blasts on the ship's whistle. Thereafter he heard the PONCE DE LEON "riding my anchor chain" and when the PONCE DE LEON was approximately two-thirds of the way past the WILMINGTON GETTY's bow, the PONCE DE LEON's port side in way of the forward end of her midship house made contact with the WILMINGTON GETTY's bow. (Ex. 7, lines 19-24; Ex. 1, pp. 22-24.) At collision the WILMINGTON GETTY's mate felt the WILMINGTON GETTY surge forward

(Ex. B, p. 20). Apparently the PONCE DE LEON hit the WILMINGTON GETTY's anchor chain, rode over it, and then dragged the WILMINGTON GETTY forward to the point where the after part of the PONCE DE LEON then collided with the WILMINGTON GETTY's bow. 55

(44) Between the time of visually sighting the PONCE DE LEON and collision there was no time to release the anchor chain which would take approximately 2 minutes. (Ex. 1, pp. 52-53, 72.) Nor was there time to use the WILMINGTON GETTY's engines which were on a 3-5 minute stand by (Ex. 10, p. 12), a more than reasonable precaution, considering the circumstances including the WILMINGTON GETTY's precautions of manning her radar and her radio - which should have been effective except for the PONCE DE LEON's gross negligence.

Comment

The WILMINGTON GETTY's mate testified he did not know the time it would take to get power to the WILMINGTON GETTY's engines. (Ex. 1, p. 47.) On other occasions he had seen the ship go from Finished With Engines to getting up power in 15 minutes. Captain Dervin was not familiar with conditions on the WILMINGTON GETTY on the day of the collision to give any meaningful estimates on the subject. (T. 90.)

(45) Considering all the circumstances I find that the PONCE DE LEON has failed in its burden of proving negligence - in any degree - on the WILMINGTON GETTY's part.

A. By radar the WILMINGTON GETTY's mate alertly observed the PONCE DE LEON turn out of the channel. He correctly recognized that risk of collision existed because of the PONCE DE LEON's action. And he immediately communicated with the PONCE DE LEON and informed the PONCE DE LEON twice that the WILMINGTON GETTY was at anchor. The PONCE DE LEON acknowledged this information and advised the WILMINGTON GETTY that the PONCE DE LEON

saw the WILMINGTON GETTY and would pass clear - as was the PONCE DE LEON's duty. Certainly, up to this point (with the PONCE DE LEON .5 or .6 miles from the WILMINGTON GETTY and approximately 3 minutes before collision) there was no need for the WILMINGTON GETTY to take any immediate action to try to avoid the PONCE DE LEON. The WILMINGTON GETTY was entitled to rely on the PONCE DE LEON's statement that it would comply with its duty and keep clear of the WILMINGTON GETTY.

B. After the radio communications, the WILMINGTON GETTY's watch officer continued observing the PONCE DE LEON on radar and determined that the PONCE DE LEON would clear slightly ahead of the WILMINGTON GETTY. In fact the PONCE DE LEON, when sighted visually from the WILMINGTON GETTY, was slightly ahead of the WILMINGTON GETTY. The PONCE DE LEON's bow cleared the WILMINGTON GETTY and - except for the PONCE DE LEON's hitting the WILMINGTON GETTY's anchor chain and dragging the WILMINGTON GETTY into collision - the PONCE DE LEON would have passed clear of the WILMINGTON GETTY. Certainly during the period of radar observation between the radio communications and visual sight there was no doubt upon the part of the WILMINGTON GETTY's mate that the PONCE DE LEON would pass clear - just as the PONCE DE LEON's master had assured him. Thus, during said period, there was no reason for the WILMINGTON GETTY to try to take action to avoid the PONCE DE LEON. If there was any error in the WILMINGTON GETTY's radar observation (which there was not) it was caused by the fact that the PONCE DE LEON was changing course and speed, and was subject to the force of the current as she approached the WILMINGTON GETTY. Changes in the course and speed of an oncoming ship can cause the radar indications to be misleading. (Fonda T. 143-144.)

C. At visual sight - just seconds (Ex. 1, p. 23; Ex. 16, p. 48) before collision there was simply no time to make any avoiding action. It would take approximately 2 minutes to release the WILMINGTON GETTY's anchor chain and the WILMINGTON GETTY would have to rely on the current to move her backwards. (Ex. 1, p. 52-53, 72.) No custom or duty requires an anchored ship such as the WILMINGTON GETTY to have her engines ready to use instantaneously. It is unlikely, considering all the circumstances, that even if her engines had been immediately available, the WILMINGTON GETTY could have moved in time in the few seconds between visual sight and collision. The anchor and chain would hold the ship until sufficient power was built up by the engines to break the anchor loose and try to drag it. Large ships such as the WILMINGTON GETTY simply do not move in seconds. Captain Meade of the PONCE DE LEON knew the WILMINGTON GETTY could not move in a short time and he never expected her to move. (Ex. 16, p. 45.)

D. The arguments at trial by defense counsel and the views of defendant's expert Captain Dervin (T. 88) are based on hindsight, and can be given no weight. They ignore the fact of the radio communications in which the PONCE DE LEON's master assured the WILMINGTON GETTY that the PONCE DE LEON would clear the WILMINGTON GETTY; they ignore the WILMINGTON GETTY's radar observation that the PONCE DE LEON in fact would clear the WILMINGTON GETTY; primarily the defense arguments are based on an improper theory of law that the WILMINGTON GETTY was obliged to anticipate the PONCE DE LEON's gross negligence and then be ready to take extraordinary action to avoid said gross negligence.

E. The PONCE DE LEON merely attempts to raise doubts about the WILMINGTON GETTY's actions. These arguments are not based on the facts or the law and must be rejected.

(46) I find that the WILMINGTON GETTY was in no way negligent and did not contribute to the collision.

Respectfully submitted,

KIRLIN, CAMPBELL & KEATING
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

-against-

SS PONCE DE LEON, her engines, tackle, etc., Sun Leasing Co. and Transamerican Trailer Transport, Inc.,

Defendants.

73 Civil 3480 (RHL)

IN ADMIRALTY

PLAINTIFF'S PROPOSED CONCLUSION'S OF LAW

(1) This is a case of admiralty and maritime jurisdiction and this court has jurisdiction over the subject matter and the parties. Article III, Sec. 2, United States Constitution; 28 U.S.C. § 1333.

(2) At the material times, the WILMINGTON GETTY and the PONCE DE LEON were upon the inland waters of the United States and their duties were prescribed by the Inland Rules of the Road, 33 U.S.C. § 171 et seq. and by the Vessel Bridge-To-Bridge Radio-telephone Regulations, 33 U.S.C. § 1201 et seq. and 33 C.F.R. § 26.01 et seq.

(3) The collision was caused solely by the gross negligence of the PONCE DE LEON in the following respects:

A. The PONCE DE LEON recklessly proceeded through dense fog at an immoderate speed of 10.5-12 knots in violation of Article 16, Inland Rules of the Road, 33 U.S.C. § 192, because after the anchored WILMINGTON GETTY came into visual sight, just seconds before collision, the PONCE DE LEON could not stop her headway in time to avoid collision. The COLORADO, 91 U.S. 692, 701-703 (1876); The NACOCCHEE, 137 U.S. 330, 338-339 (1890); The TUXEDO, 77 F.2d 354, 355 (2 Cir. 1935); Victorias Milling Co. v. The SS Gulfport, 166 F. Supp. 396, 400 (S.D.N.Y. 1958); Villain & Fassio E. Co. v. T/S E. W. Sinclair, 207 F. Supp. 700,

706-707 (S.D.N.Y. 1962).

B. The PONCE DE LEON negligently failed to make proper use of her radar in violation of Article 29, Inland Rules of the Road, 33 U.S.C. § 221. Although the WILMINGTON GETTY was observed by radar at a distance of 1.5 - 2 miles, approximately 8 to 11 minutes before the collision, no plot was made to determine the course, speed or closest point of approach to the WILMINGTON GETTY. As a consequence, those on the PONCE DE LEON in charge of her navigation were ignorant of the fact that the WILMINGTON GETTY was stationary. Instead, without knowing what the WILMINGTON GETTY was doing, the PONCE DE LEON was blindly steered out of the channel to pass dangerously close to the anchored WILMINGTON GETTY, where, through inattention or misjudgement, collision could not be avoided. If necessary, the PONCE DE LEON should have been stopped to make time for a plot. In any event, reasonable use of her radar would have permitted the PONCE DE LEON to navigate safely around the stationary WILMINGTON GETTY. It is a serious fault to fail to make proper use of radar to inform the navigator of the positions and movements, if any, of nearby vessels. The MEDFORD, 69 F. Supp. 622 (E.D.N.Y. 1946); Polaris Steamship Co. v. T/S Sandefjord, 236 F.2d 270, 271 (2 Cir. 1956); Cities Service Oil Co. v. S/S Sea Wind, 242 F.2d 368, 369 (2 Cir. 1957). Afran Transport Co. v. The Bergechief, 170 F. Supp. 893 (S.D.N.Y. 1960) (Levet J.), aff'd. 274 F.2d 469, 475 (2 Cir. 1960).

C. If the Court accepts Captain Meade's testimony that the fog signals of the anchored WILMINGTON GETTY were not heard by him or were not reported to him, then the PONCE DE LEON failed to maintain a proper lookout in violation of Article 29, Inland Rules of the Road, 33 U.S.C. § 221. Three officers

of the PONCE DE LEON and Captain Meade are at odds as to whether the fog signals were heard and reported; however, the weight of evidence is that the fog signals were heard and were reported to Captain Meade (see Plaintiff's Proposed Finding of Fact No. 23) thus obligating the PONCE DE LEON to stop her engines and navigate with caution.

D. In violation of Article 16, Inland Rules of the Road, 33 U.S.C. § 192(a), those in charge of the PONCE DE LEON negligently failed to stop her engines and navigate with caution after hearing, forward of her beam, the fog signals of the WILMINGTON GETTY.

(4) The PONCE DE LEON's multiple statutory violations, described in paragraph numbered (3) above, cast upon her the burden of proving, as to each of those violations, not merely that it might not have been one of the causes of collision, or that it probably was not, but that it could not have been. The PENNSYLVANIA, 86 U.S. 125, 136 (1873). In the circumstances, the PONCE DE LEON clearly has not sustained that burden. Indeed, for the reasons stated above, each of those violations was a cause of the collision.

(5) In addition to the PONCE DE LEON's numerous violations of statute, and other acts of negligence, a presumption of negligence arises when a moving vessel collides with an anchored vessel. Sun Oil Company v. S.S. Georgel, 245 F. Supp. 537, 544 (S.D.N.Y., 1965) (Levet J.). A vessel at anchor is entitled to the highest degree of privilege.

> "[T]here is not only a presumption in her favor...but a presumption of fault on the part of the other vessel, which shifts the burden of proof upon the latter." The OREGON, 158 U.S. 186, 197 (1894).

> "Such presumption can be wholly overcome only by proof that the moored vessel was solely at fault, that the moving vessel was without fault, or that the collision resulted from an inevitable accident (cases cited omitted)." United Fruit Co. v. Mobile Towing, 177 F. Supp. 297, 301 (S.D. Ala. 1959).

(6) The PONCE DE LEON has failed to establish contributory liability on the part of the WILMINGTON GETTY. I reach this conclusion on the basis of the following considerations:

A. Since the PONCE DE LEON was herself so grossly at fault, her burden of proving fault on the part of the WILMINGTON GETTY is more than ordinarily heavy; and any doubts as to the WILMINGTON GETTY's navigation should be resolved in her favor. As stated by the Supreme Court in The City of New York, 147 U.S. 72, 85 (1893):

> "In view of the recklessness with which the steamer was navigating that evening, it is no more than just that the evidence of contributory negligence on the part of the sailing vessel should be clear and convincing. Where fault on the part of one vessel is established by uncontradicted testimony, and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to the management of the other vessel. There is some presumption at least adverse to its claim, and any reasonable doubt with regard to the propriety of the conduct of such other vessel should be resolved in its favor."

See also The OREGON, 158 U.S. 186, 197, 204 (1894); Villain & Fassio E.Co. v. T/S E. W. Sinclair, 207 F. Supp. 700, (S.D.N.Y. 1962).

B. The WILMINGTON GETTY was anchored well outside of the channel, and very near Anchorage Area 25 (a location chosen by the WILMINGTON GETTY's master to avoid crowding other vessels in the Anchorage Area). Numerous vessels safely passed the anchored WILMINGTON GETTY. She presented no navigational danger

to ships complying with the fog regulations. Victorias Milling Co., Inc. v. The SS Gulfport, 166 F. Supp. 396 (S.D.N.Y. 1958); The SS Randa, 56 F. Supp. 503, 511 (S.D.N.Y. 1944); The Bright, 38 F. Supp. 574, 581 (D. Md. 1941).

C. The WILMINGTON GETTY not only complied with her statutory duty of sounding proper fog signals in compliance with Article 15(d), Inland Rules of the Road, 33 U.S.C. § 191, as extra precautions, her radar was monitored by a licensed mate on her bridge, as was her radio on Channel 13.

D. Obviously, a vessel has a right to lie at anchor. Sun Oil Company v. SS Georgel, 245 F.Supp. 537, 544 (S.D.N.Y. 1965), (Levet, J.). Here the master of the PONCE DE LEON observed the WILMINGTON GETTY by radar at a distance of 1.5 - 2 miles approximately 8 to 11 minutes before the collision, and was not surprised or prejudiced in any way by the fact of where the WILMINGTON GETTY anchored. The PONCE DE LEON had ample time to see and avoid the WILMINGTON GETTY - if the PONCE DE LEON had been properly navigated. The Randa, 56 F. Supp. 508, 511 (S.D.N.Y. 1944).

E. As this Court stated in Sun Oil Company v. SS Georgel, 245 F. Supp. 537, 545 (S.D.N.Y. 1965), (Levet J.):

> "A vessel at anchor which can take action to avoid collision must do so. But an anchored vessel is at first entitled to rely on moving vessels to avoid her. The Lady Franklin, 14 Fed. Cas. p. 934 (No. 7,984) (D. Mass. 1873). Her first duty is to remain at rest. The Ceylon Maru, 266 F. 396 (D. Maryland, 1920), reversed on other grounds, 281 F. 538 (4th Cir. 1922). If she has the power to avoid the accident, she should do so. However, she is under no obligation to resort to extraordinary maneuvers ...." (Empnasis added.)

F. Here, the WILMINGTON GETTY's mate alertly observed the PONCE DE LEON turn out of the channel. The vessels communicated by radio and the PONCE DE LEON's master acknowledged he was aware of the anchored WILMINGTON GETTY and stated the PONCE DE LEON would pass clear of her. The vessels were then .6 miles apart. The WILMINGTON GETTY's mate was entitled to rely on the PONCE DE LEON's statement (and duty) to keep clear of the WILMINGTON GETTY. There was ample time and space for the PONCE DE LEON to avoid the WILMINGTON GETTY. Clearly the WILMINGTON GETTY had no reason or duty at this point to take any avoiding action.

G. After the radio communications, the WILMINGTON GETTY's mate continued to watch the PONCE DE LEON on radar and determined that the PONCE DE LEON would pass clear ahead of the WILMINGTON GETTY. Then, just seconds before collision, the PONCE DE LEON appeared out of the fog passing so close ahead of the WILMINGTON GETTY that the PONCE DE LEON collided with the WILMINGTON GETTY's anchor chain and dragged the WILMINGTON GETTY forward into collision. In the period between the radio communications and visual sight (approximately 3 minutes or less) the WILMINGTON GETTY had no reason or duty to take avoiding action. In the seconds between visual sight and collision there simply was not sufficient time to take any avoiding action.

H. The PONCE DE LEON raises the typical arguments usually heard in a case of this kind - that somehow the anchored vessel could have and should have anticipated the moving ship's gross negligence and taken action to avoid the effects of such gross negligence. The PONCE DE LEON merely attempts to raise doubts about the WILMINGTON GETTY's actions. This is not sufficient for the PONCE DE LEON to carry its burden of proving negligence in any degree on the WILMINGTON GETTY's part.

(7) Defendant's arguments that the WILMINGTON GETTY should have had her engines on instantaneous standby and that the WILMINGTON GETTY should have commenced backing her engines and/or slackening her anchor chain at some point before visual sighting are based on hindsight and the improper theory that those on the WILMINGTON GETTY were obligated to anticipate the almost incomprehensibly gross negligence of the PONCE DE LEON.

(8) There is no evidence whatever in the record that it was customary for a ship laying at anchor, as the WILMINGTON GETTY was, to maintain her engines and boilers in condition for such immediate movement and no decided cases have been produced as authority for this claim. The Charles Hubbard, 229 Fed. 352, 356 (6 Cir. 1916). To require keeping a crew standing by at the engines of an anchored ship such as the WILMINGTON GETTY, considering all the existing circumstances and the other precautions taken by the WILMINGTON GETTY, would be to exact an unwarranted standard of vigilance. The Beaverton, 273 Fed. 539, 540-541 (S.D.N.Y. 1919); The Ceylon Maru, 266 Fed. 396, 402 (D. Md. 1920); The Bright, 38 F. Supp. 574, 581 (D. Md. 1941); The Randa, 56 F.Supp. 508, 511 (S.D.N.Y. 1944). The standard would be so high as to require those on the WILMINGTON GETTY to anticipate the PONCE DE LEON's gross negligence.

(9) "The law does not impose upon (a vessel) the obligation of anticipating improper navigation on the part of the other vessel." Long Island R. Co. et al. v. Killien, 67 F. 365, 368 (2 Cir. 1895); The ILLINOIS, 103 U.S. 298 (1881); The OREGON, 158 U.S. 186, 203 (1894); The Randa, 56 F. Supp. 508, 511 (S.D.N.Y. 1944).

(10) It follows that the PONCE DE LEON must be held solely to blame. Defendant's counterclaims are hereby dismissed.

(11) Plaintiff is entitled to judgment on its complaint for the full amount of its damages plus interest from the date of the collision and its costs.

Respectfully submitted,

KIRLIN, CAMPBELL & KEATING
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

67

GETTY OIL COMPANY (EASTERN OPERATIONS),

Plaintiff,

73 Civ. 3480 (RHL)

-against-

SS "PONCE DE LEON", her engines, tackle, etc., Sun Leasing Co. and Transamerican Trailer Transport, Inc.

Defendants.

DEFENDANTS' PROPOSED FINDINGS OF FACT

A. The parties have stipulated the facts stated in paragraphs 1-6 (T. 33-35*).

(1) This is a case of admiralty and maritime jurisdiction.

(2) Getty Oil Company (Eastern Operations), Inc. was and still is a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at 660 Madison Avenue, New York, N.Y. and was and still is the owner and operator of the steam tanker WILMINGTON GETTY. The WILMINGTON GETTY is a steam tanker 13,659 gross tons, 583.5 feet in overall length and 74.2 feet in breadth. On May 10, 1973 she was laden with a cargo of about 20,000 tons of heating oil and gasoline and her drafts were 31 feet 9 inches forward and 31 feet 11 inches aft. She was engaged on a voyage from Delaware City, Delaware bound for Bayonne, New Jersey.

(3) Sun Leasing Co. and Transamerican Trailer Transport, Inc., defendants, were and still are domestic corporations organized and existing under and by virtue of the laws of one of the states of the United States with

19-190

offices and places of business at 358 St. Marks Place, Staten Island, New York and were and still are the owner and operator of the steamship PONCE DE LEON. The PONCE DE LEON is a steamship of 15,134 gross tons, 700 feet in overall length, 92.2 feet in breadth. The distance from her bridge to her bow is approximately 350 feet. Her steam turbine engines are of 32,000 horsepower. At the material times she was laden with a cargo of trailers to drafts of 21 feet 8 inches forward and 24 feet 6 inches aft. Her displacement was thus approximately 19,400 tons. She was engaged on a voyage from San Juan, Puerto Rico to the Transamerican Trailer Transport Terminal, Staten Island, New York.

(4) On the morning of May 10, 1973 the WILMINGTON GETTY arrived in New York Harbor and proceeded up Ambrose Channel. The weather conditions included dense fog. As the WILMINGTON GETTY proceeded up the channel, her radar indicated that the various anchorage areas were crowded and her master decided to anchor off Norton Point, Brooklyn; and at approximately 0856 hours, the WILMINGTON GETTY anchored off Norton Point.

(5) On May 10, 1973 as the PONCE DE LEON transited Ambrose Channel in fog, she was advised that the tugs assigned to assist her into her berth were fog bound and would be unable to assist her for an indefinite period of time. The master of the PONCE DE LEON thereupon decided to anchor in Gravensend Bay Anchorage Area No. 25.

(6) At approximately 1314 hours the PONCE DE LEON collided with the anchored WILMINGTON GETTY, causing damage to the WILMINGTON GETTY's bow, and the PONCE DE LEON's port side.

(7) The WILMINGTON GETTY proceeded up Ambrose Channel in dense fog. At 0807 hours the WILMINGTON GETTY passed Buoy R "6" in Ambrose Channel and at 0817 hours the WILMINGTON GETTY passed Buoy R "10" in Ambrose Channel. The distance between Buoy R "6" and Buoy R "10" is approximately 1.95 miles. By covering this distance in approximately ten minutes the WILMINGTON GETTY was proceeding at a speed of approximately 11.7 knots. (Ex. 5 May 10, 1973, Ex.3).

COMMENTS

Plaintiff's counsel made much of the speed of the PONCE DE LEON and viciously attacked defendant's expert Captain Dervin throughout his proposed comments to Findings of Facts. This is especially true in his comment to Proposed Finding No. 26 where plaintiff's counsel categorized Captain Dervin's testimony as "incredible". Captain Dervin (T.91) did not condone the use of excessive speed or even state it was prudent. In fact, Captain Dervin testified: (T.91):

"Q. Are you saying just because someone else goes an excessive speed, something immoderate, you have to do it also?

A. No, you don't, but it is the common practice."

As a seagoing Captain with over 28 years of experience as Master, Captain Dervin was responding to facts of life at sea but clearly he did not condone use of excessive speed as a safe navigation practice. The speed of 11.7 knots by WILMINGTON GETTY earlier that morning in similar conditions of dense fog while proceeding up Ambrose Channel, confirms the course of conduct by vessels in similar conditions. In fact, the WILMINGTON GETTY was proceeding at a greater speed that the PONCE DE LEON under similar fog conditions.

(8) The WILMINGTON GETTY anchored at 0856 and was at all times on May 10, 1973, anchored outside the designated anchorage area off Norton's Point. The Master of the WILMINGTON GETTY did not know that Anchorage 25 was closed to navigation by Local Notice to Mariners No. 10, dated March 7, 1973 (Ex.12, p.32; Ex.14; Ex. 12, p.24).

(9) The WILMINGTON GETTY was anchored with three (3) shots (290 feet) of anchor chain in the water awaiting a favorable tide. (Ex.5; Ex.10, p.26).

(10) At approximately 1300 hours on May 10, 1973, the WILMINGTON GETTY completed swinging with the tide and the vessel was now in a different position than the position at which the WILMINGTON GETTY originally anchored at 0856 hours. (Ex.1, p.12; Ex. 10, p.26, 27).

(11) At approximately the same time that the WILMINGTON GETTY was moving through the water completing her swing with the flood tide, the WILMINGTON GETTY was initially observed on radar by the PONCE DE LEON.

(12) The WILMINGTON GETTY did not advise other vessels in the vicinity at or about the time of the collision that she was anchored outside the normal anchorage area, in a navigable waterway and loaded with a full cargo of gasoline. A security call was transmitted by WILMINGTON GETTY immediately upon anchoring advising all vessels in the vicinity that WILMINGTON GETTY was anchored in a position outside the anchorage area. This security call was never repeated again. (Ex.10, p.20, 21).

(13) The WILMINGTON GETTY anchored at the head of the customary navigable throughway used by vessels approaching the only safe anchorage after exiting Ambrose Channel at Buoy 18. The position of anchored WILMINGTON GETTY

hampered other vessels navigation and obstructed the entrance into Gravesend Anchorage. (Ex.16, p.58,60; T-47,48).

(14) This area was congested with moving vessels and the congestion was aggravated by the fog conditions existing on the day of the collision. (Ex.1,p.40, T-46, 47,49).

(15) The WILMINGTON GETTY blocked the customary entrance to the only safe anchorage area available. The WILMINGTON GETTY should have anchored further up into the anchorage, leaving the approaches to the anchorage clear for other vessels who would be required to anchor because of the fog condition. (T-59, 62, 87).

COMMENTS

The WILMINGTON GETTY knew at the time it was proceeding up Ambrose Channel that it would anchor for at least five hours to await its tugboats which were not scheduled until 1400 hours. (Ex.10, p.8). At the time of anchoring, Master of WILMINGTON GETTY issued a security call to warn other vessels of its location but did not issue periodic security calls. (Ex.10, p.20-22). What use was one security call to warn other vessels of a pecarious situation when numerous other vessels would pass this same area over the next five hours and have no knowledge of WILMINGTON GETTY situation. Captain Brixen of WILMINGTON GETTY admitted this location was congested and because of the fog, he directed an initial security call to be issued at 0900 hours. (Ex.10, p.20-22).

Further, the WILMINGTON GETTY turned right at Buoy 18 and dropped her anchor at the first opportunity without consideration for other vessels who would also be forced to anchor in the only safe anchorage in the entire area.

(Ex.16, p.58). This area is extremely congested with moving vessels, and together with fog creates a very difficult situation for vessels navigating in and out of New York Harbor. In spite of all this, the WILMINGTON GETTY drops her anchor right in the middle of one of the busiest navigable thoroughfares in the world in total disregard to the rest of her fellow mariners. To compound a terrible situation the WILMINGTON GETTY was swinging with the tide, with her engines on F.W.E. thereby not giving her instantaneous maneuverability to help avoid a dangerous situation. Captain Dervin pointed out that WILMINGTON GETTY used very poor judgment in anchoring where it did and obstructing the entrance to the anchorage. (T-47, 50). Plaintiff's counsel has attempted to attack Captain Dervin's opinion in this regard in its proposed Finding No. 12. There is absolutely no evidence whatsoever in the record to support plaintiff's counsel's allegations in proposed Finding No. 12. It should be observed that there are no references to evidence to support this proposed Finding. Counsel for plaintiff has apparently designated itself as an expert in pilotage for New York Harbor. Captain Dervin's testimony is the only testimony on record in this regard, that vessels customary turn right at Buoy 18, and proceed directly to the anchorage, and that WILMINGTON GETTY was obstructing the customary entrance to the anchorage. This is substantiated by Captain Meade, Master of PONCE DE LEON. It should also be noted that the WILMINGTON GETTY performed exactly this maneuver when it passed Buoy 18 and turned right to anchor. (Ex.10,p.8). Captain Dervin never intimated as alleged by plaintiff's counsel that if a vessel blocked the entrance to the anchorage, another vessel underway could "blindly" head for

the anchored vessel. Such an allegation is outrageous and totally inconsistent with testimony and opinions of Captain Dervin. Plaintiff's counsel further alleges that Captain Brixen anchored outside anchorage to avoid dredges at anchor and that Captain Meade should have taken similar precautions. The only problem with this theory is that no other vessels were anchored in this area early in the morning and that WILMINGTON GETTY anchored at the first opportunity, blocking the access to the anchorage for other vessels.

(16). The Master of the WILMINGTON GETTY put the vessel's engines on "FINISHED WITH ENGINES" (F.W.E.) upon anchoring the vessel. The WILMINGTON GETTY takes approximately three (3) to five (5) minutes to get underway when the engine telegraph is on F.W.E., while the vessel can move instantaneously when the engine telegraph is on "STANDBY ENGINES" (S.B.E.). (Ex.1, pp.27,48; Ex.10, p.12).

(17) The WILMINGTON GETTY's watch officer, Mr. Farago was not given any instructions regarding the status of the engines on May 10, 1973 when relieving the watch. (Ex.1, p.26; Ex.10, p.23).

(18) Watch officer Farago was of the opinion that it would take approximately fifteen (15) minutes to go from F.W.E. to S.B.E. (Ex.1, pp.46-48).

(19). It was negligence on the part of the Master of WILMINGTON GETTY not to advise his watch officers of status of engines, when if known, the engines could have been utilized to avoid the collision.

(20) In any event, the WILMINGTON GETTY should have maintained her engines on S.B.E. considering the dangerous location that she was anchored in dense fog. (Ex.1,p.28; Ex.10, pp.23,24; T-83, 84).

COMMENTS

There is clearly a conflict between watch officer Farago's testimony and Captain Brixen, Master of WILMINGTON GETTY. A reasonable reading of Mr. Farago's testimony indicates that as far as he was concerned, since the engines were on Finished With Engines (F.W.E), utilization of the engines was not one of the options available to him at 1308 when the PONCE DE LEON turned right at Buoy 18. Mr. Farago testified at page 46 (Ex. 1):

> "I mean like if you wanted power right now, there would be -- if you're finished with engines, it takes so much time to get power..."(emphasis supplied).

Again, on page 46 (Ex.1):

> "Q. Let me ask you this, generally, if the WILMINGTON GETTY were on Finished With Engines, can you tell me how much time it would take in an emergency situation for the engine room to get up power?
>
> A. We've gone from Finished With Engines to first bell in 15 minutes."

It is submitted that a fair reading of Mr. Farago's testimony indicates that in emergency situations, the engine room, if prompt, could get power in as little as 15 minutes. However, certainly Mr. Farago was not under the impression on that day that he could get power on his engines in 3 - 5 minutes. It is interesting to note that plaintiff's counsel in an effort to attack Captain Dervin's opinion that WILMINGTON GETTY should not have kept her engines on F.W.E., pointed out (T-89,90):

> "Q. You submitted some minutes on direct examination, Captain Dervin, concerning the WILMINGTON GETTY. Did you consider the testimony of her captain that her engines were on a situation where they could get power within three to five minutes; did you consider that?
>
> A. I consider it is very unlikely because in my experience in all those years--...

Q. But that was not the testimony of the captain?

A. The captain said finished with engines. That means that engineers are no longer required in engine room except for one man that is there, the oiler.

Q. You don't know the actual conditions in the WILMINGTON GETTY at that time?

A. No, I do not.

Q. You still dispute the captain, he said he could get his power on three to five minutes?

A. I strongly doubt it.

Q. Captain, you can have various stages of readiness on board ships in the engine room?

A. Finish with engines is only one finish with engine.

Q. It depends on the precise instructions given by the captain to the engineer?

A. I didn't read any instructions from the captain.

Q. The captain did say he would have power in three to five minutes, is that correct?

A. That is what he said. (Emphasis supplied).

If we believe plaintiff's counsel's arguments and Captain Brixen's testimony that there are various stages of readiness in engine room and WILMINGTON GETTY could have moved with her engines in three to five minutes then WHY WASN'T THE WATCH OFFICER AWARE OF THIS?

Plaintiff's counsel admits in its comment to proposed Finding No. 44 that watch officer Farago "did not know the time it would take to get power on WILMINGTON GETTY's engines".

Isn't it reasonable to infer that if watch officer on WILMINGTON GETTY was aware of this, he would have placed the engines on S.B.E. immediately when he considered the PONCE DE LEON a "menace" at 1308, and that a risk of collision existed at that moment. Obviously, watch officer

Farago did not so react because he mentally eliminated his engines as an alternative, five minutes before collision when he was under the impression that it took approximately 15 minutes to get power on the engines. The Master of WILMINGTON GETTY was clearly negligent in not advising his watch officer of stage of readiness of engines, which could have been used instantaneously to move vessel backward the mere 15 - 20 feet and completely avoid the collision. Either way, the WILMINGTON GETTY was negligent in failing to utilize her engines to avoid the collision. Captain Dervin with numerous years sea experience stated that the Captain of WILMINGTON GETTY made a great error in judgment by placing the engines of "F.W.E." (T-83,84, 87,88). Clearly, if the watch officer of WILMINGTON GETTY has use of his engines, the WILMINGTON GETTY could have gone astern in a matter of seconds and completely avoided the collision.

Captain Dervin was quite emphatic in his opinion. (T-86).

> "Captain, in view of that testimony and these photographs, can you tell us, in your opinion, <u>if the vessels had gone full astern prior to the collision would the collision have been avoided</u>?
>
> A. <u>Definitely, yes.</u>
>
> Q. Have you ever personally experienced a similar situation where you used full astern when your vessel was anchored under similar circumstances as described in this suit?
>
> A. Yes, I have.
>
> Q. What was the experience that took place at that time?
>
> A. The other vessel that was going too close to us cleared us by a narrow margin but she cleared us.
>
> Q. How long did it take to effect this maneuver, in your experience?
>
> A. The engines, if they are engines on standby,

they are standing on a maneuvering position, and as soon as you give them a jingle astern and another jingle to give it everything they have, in seconds we start moving astern". (Emphasis Supplied).

(21) At approximately 1308 hours, the watch officer of WILMINGTON GETTY observed on radar, a ship turning right at Buoy 18. (Ex.1, p.18).

(22) The watch officer of WILMINGTON GETTY considered the PONCE DE LEON a menace and a danger to WILMINGTON GETTY and considered a risk of collision to exist when PONCE DE LEON turned right at Buoy 18 at 1308 hours. (Ex.1, p.41,55; Ex. A; Ex. B; T-67,70,71,73).

(23) After turning right at Buoy 18, the PONCE DE LEON continued to turn right on a steady curve and never erratically altered its course until the point of collision. (Ex.16, pp.37,65).

(24) The watch officer of WILMINGTON GETTY testified that he watched the PONCE DE LEON continuously on radar and it looked like the PONCE DE LEON would pass clear ahead of WILMINGTON GETTY. But, he did not know whether the PONCE DE LEON would in fact pass ahead, because he made no manual plot of the PONCE DE LEON. The watch officer claimed he made a "mental plot" of the PONCE DE LEON. Mr. Farago, the watch officer on WILMINGTON GETTY made no attempt to determine the distance the PONCE DE LEON would pass ahead of the WILMINGTON GETTY, the closest point of approach (C.P.A.). The WILMINGTON GETTY's watch officer made no attempt to plot whatsoever. (Ex.1, p.22,42,43).

COMMENT

There can be no question that watch officer Farago considered a danger of collision existed between WILMINGTON GETTY and PONCE DE LEON when PONCE DE LEON turned right at

Buoy 18 to enter the anchorage. Shortly after the collision at the United States Coast Guard investigation, Mr. Farago testified: (Ex. B, p.15)

> "Q. When did you become aware of that a risk of collision existed?
>
> A. When the PONCE DE LEON passed Buoy 18 and turned right." (Emphasis Supplied).

As the statement by Master of WILMINGTON GETTY to United States Coast Guard stated (T-71):

> "At approximately 1308, an inbound vessel was observed on the radar apparently on a collision course after said vessel had passed Ambrose Buoy No. 18".

Even months later at his deposition Mr. Farago indicated that he considered the PONCE DE LEON a menace and a danger to WILMINGTON GETTY, when PONCE DE LEON turned right at Buoy 18. (Ex.1, p.41,55).

Although, such a danger existed almost five minutes before a collision, Mr. Farago did absolutely nothing! Plaintiff's counsel has been extremely critical of the use of radars on PONCE DE LEON in its proposed Findings Nos. 17, 18, 29, 30 and 31. Plaintiff's counsel chastises Master of PONCE DE LEON for making only a "mental" plot and not making a manual plot to compute the closest point of approach. However, the watch officer aboard WILMINGTON GETTY did exactly the same thing. Watch officer Farago made no manual plot. He merely watched the radar and it "looked like" the PONCE DE LEON would pass clear ahead of him. The watch officer indicated that he was concerned only with PONCE DE LEON, yet he did not plot this one target to determine if it would sufficiently pass clear ahead of WILMINGTON GETTY. Mr. Farago knew the danger existed but he chose to take no action whatsoever. Even the plaintiff's expert, Mr. Fonda when questioned by plaintiff's counsel as to whether the watch officer on WILMINGTON GETTY could have determined on the radar whether the PONCE DE LEON would strike the WILMINGTON GETTY stated (T-144):

"He can probably tell whether it is going to hit him or come awfully, awfully close".

Clearly, if the watch officer of WILMINGTON GETTY made proper use of its radar from 1308 hours, it could have determined a collision was imminent or at the very least, as described by plaintiff's expert, "come awfully, awfully close".

Captain Dervin testified in this regard (T-73):

"Q. Captain, in view of this testimony by Mr. Farago and Captain Brixen, in your opinion should Mr. Farago as watch officer have anticipated the risk of this collision once the PONCE DE LEON turned right out of the channel at Buoy 18?

A. Definitely, yes."

The PONCE DE LEON made no erratic course changes after turning right at Buoy 18. The PONCE DE LEON continually came right until the very moment of impact. If anything, the PONCE DE LEON was constantly moving to the left on the WILMINGTON GETTY's radar scope. Plaintiff's counsel insists the PONCE DE LEON's use of radar was negligent and contributed to the collision but commends its watch officer for performing the identical procedures. Where is the consistency in plaintiff's argument? If one vessel is found negligent for the use of its radar how can the other vessel be found free of negligence for utilizing the same practices and procedures? It is submitted that WILMINGTON GETTY was negligent in its operation and use of her radar and were it not due to this negligence, the collision could have been completely averted.

(25) The WILMINGTON GETTY was anchored with her port anchor and two crewmembers were located on the bow in the vicinity of the anchor. The anchor chain was secured by a pawl and wheel brake. (Ex.1, p.28-30,52).

(26) It would take two (2) minutes or less to let go the anchor chain, which required only lifting the

pawl and turning the wheel brake. (Ex. 1, 52, 53; T-69, 70,117).

(27) The vessels collided at 1314 hours and if the watch officer on WILMINGTON GETTY had released the brake on the anchor between 1308 hours and 1312 hours, the WILMINGTON GETTY could have drifted astern with the current and entirely avoided the collision. (Ex.1, p.56; T-73,88).

(28) The photographs of the WILMINGTON GETTY (Ex.13) and PONCE DE LEON (Ex.27) confirm that if the WILMINGTON GETTY had drifted back only 15 - 20 feet, the collision could have been averted. (T-85).

COMMENT

The testimony is clear that if watch officer of WILMINGTON GETTY had determined that after turning right at Buoy 18, the PONCE DE LEON was going to collide with WILMINGTON GETTY he would have let the anchor chain run and let WILMINGTON GETTY drift astern with current. The only reason Mr. Farago did not take such action was because he assumed the PONCE DE LEON would pass clear ahead of WILMINGTON GETTY. Plaintiff's counsel has made much of the fact in its proposed Finding No. 44 that WILMINGTON GETTY could do nothing after"visually" sighting the PONCE DE LEON seconds before collision. This, of course, goes without saying. Defendants contend that Mr. Farago did not have mere "seconds" within which to act, but from his own testimony, a risk of collision existed five minutes before impact. This is when Mr. Farago should have commenced taking action to avoid a collision which he recognized five minutes before impact. The testimony clearly established that WILMINGTON GETTY could have let her anchor chain run in two minutes and according to Captain Dervin probably less. All that was necessary, was to lift the anchor pawl and turn the brake wheel. Two crewmembers were located on

bow of WILMINGTON GETTY and this maneuver could have been effected quite easily. 81

This collision was not the usual situation involving an anchored vessel. All the WILMINGTON GETTY had to do was drift astern 15 to 20 feet and the entire incident would have been averted. The photographs (Ex.13 and 27) of the vessels clearly confirm this. Captain Dervin testified at T-73:

"Q. Bearing in mind that there is testimony in this action that you have read and heard that the PONCE DE LEON almost missed the WILMINGTON GETTY, in your opinion would the loosing of the anchor chain, as referred to by Mr. Farago, avoid the collision that eventually took place--would it have avoided the collision?

A. In my opinion, yes.

Q. Do you agree with Mr. Farago's opinion that the flood tide would have moved the WILMINGTON GETTY back from the location where the collision took place?

A. Yes, it would." (Emphasis Supplied).

and further on T-85:

"Q. After having examined these photographs, Captain, how far back would the WILMINGTON GETTY have to have moved, in your opinion, to have avoided the collision?

A. I would say between 15 and 20 feet."

Plaintiff's counsel has not refuted any of this testimony but simply contends that Mr. Farago assumed that PONCE DE LEON would pass clear ahead of WILMINGTON GETTY and therefore this action was not necessary. It is submitted that the only reason Mr. Farago did not let go anchor chain was because he improperly evaluated the radar and concluded the PONCE DE LEON would pass clear. If Mr. Farago had made proper use of his radar, he would have concluded that PONCE DE LEON would strike the WILMINGTON GETTY and his own testimony confirms (Ex.1, p.56):

"I could have immediately let the chain run.

Q. What would this have done?

A. The flood tide would have pushed us astern."

(29) In summary, irrespective of all that took place on that eventful day, the WILMINGTON GETTY, if it properly made use of its radar, could have completely averted the collision. (T-87,88).

(30) I find that the WILMINGTON GETTY was anchored in a dangerous location and blocked the navigable entrance to the only safe anchorage available on that day. Further, that Master of WILMINGTON GETTY was negligent in failing to advise his watch officer that the engines could be in a state of readiness in 3 - 5 minutes, but that in any event, under the conditions of that day, the WILMINGTON GETTY should have maintained her engines on "standby". Also, regardless of these factors, the watch officer of WILMINGTON GETTY had last clear chance to avert the collision entirely, by letting go her anchor chain and allowing the WILMINGTON GETTY to drift back with the current. Proper and reasonable use of WILMINGTON GETTY's radar would have determined that collision was imminent and watch officer of WILMINGTON GETTY could have acted reasonable in letting go the anchor chain. I thus find the WILMINGTON GETTY also failed to make proper use of her radar.

(31) SS PONCE DE LEON was prior to the collision of May 10, 1973, tight, staunch and strong and in all respects seaworthy and properly manned, officered, equipped and supplied. (Ex.16, p.19; Ex. 26).

(32) On May 10, 1973 at approximately 1146, the PONCE DE LEON arrived at Ambrose Light Tower and was advised by the pilot aboard the SS SEALAND BOSTON that SS SEALAND BOSTON was proceeding up Ambrose Channel. (Ex.16, p.17,54).

(33) Master of PONCE DE LEON advised the pilot on board the SEALAND BOSTON that PONCE DE LEON would follow the

SEALAND BOSTON up the Channel. (Ex. 16, p.54,55).

(34) PONCE DE LEON proceeded up Ambrose Channel behind the SEALAND BOSTON and maintained a distance of approximately one mile astern of SEALAND BOSTON. Three to four other vessels were proceeding astern of PONCE DE LEON up the Channel at the same speed and maintaining a fixed relative position behind the PONCE DE LEON. All of the vessels proceeded at various courses and speeds behind the SEALAND BOSTON up Ambrose Channel. (Ex.16, p.55-57).

(35) PONCE DE LEON was proceeding up Ambrose Channel in a safe and seamanlike manner. The Master was on the bridge in charge of navigation. The Third Mate, a licensed officer, was also on the bridge as a watch officer. The helmsman was on the wheel and the Chief Officer was on the bridge wings as an additional lookout. Further, the Second Officer was on the bow as a lookout together with the Bosun and two seamen. Both of the vessel's radars were operating and being constantly monitored by the Master and Third Mate. The PONCE DE LEON was sounding a prolonged blast on her foghorn at intervals of less than one minute, the proper fog signal for a vessel underway pursuant to the U.S. Inland Rules, Article 15(a), 33 U.S.C.A. §191(a). The vessel's bridge to bridge radio telephone was set on Channel 13 and being monitored as required by the Bridge to Bridge Radio Telephone Act, 33 U.S.C. §1201 et seq. (Ex.16, p. 19, 20, 33, 48, 59; Ex. 26).

(36) While transiting Ambrose Channel, the Master of the PONCE DE LEON was advised by radio that his tugs could not be made available and that the vessel should anchor at the nearest safe anchorage. (Ex. 16, p.57, 58).

(37) The Master of PONCE DE LEON with this information decided to alter course to the right at Buoy 18 and anchor in the only available anchorage area. It would

have been unsafe for the PONCE DE LEON to anchor before Buoy 18. If the PONCE DE LEON anchored before reaching Buoy 18, it would have been situated in the middle of Ambrose Channel which is less than 500 yards wide. ( Ex.16, p. 58, 60, 61).

(38) Both radars on PONCE DE LEON were being continually monitored by Master and Third Mate. The radars indicated as many as eight (8) targets on the radar scope. The radar being monitored by the Master of PONCE DE LEON was set on two (2) mile scale. ( Ex. 16, p. 20, 21, 79).

(39) Just prior to coming abeam of Buoy 18, the Master of PONCE DE LEON observed an additional target on the radar scope, which later turned out to be the "WILMINGTON GETTY". The target was in such close proximity to SEALAND BOSTON as to give the appearance of one target on the radar scope. ( Ex. 16, p.22,24).

(40) The Master of PONCE DE LEON immediately called over Channel 13 to "vessel underway" off Norton's Point requesting her course and intention. (Ex. 16, p.41-43).

(41) Master of PONCE DE LEON repeated this inquiry several times, but received no response. The PONCE DE LEON then passed Buoy 18 at 1308 hours and her Master ordered the vessel's course altered to the right in order to proceed to a safe anchorage. ( Ex. 16, p. 41-43, 64).

(42) Master of PONCE DE LEON carefully observed the target on radar and from these visual observations of the radar and extensive pilotage experience, the PONCE DE LEON's Master determined that the WILMINGTON GETTY was moving very slowly up the right side of the channel, awaiting the arrival of her tugs to proceed into New York Harbor. Master of PONCE DE LEON with all his years experience, had

never observed a vessel anchored in this heavily traveled area where the WILMINGTON GETTY was anchored. (Ex. 16, p. 63, 64).

(43) The PONCE DE LEON then passed Buoy 18 at 1309 hours and her Master ordered the course altered to the right to proceed to anchor. PONCE DE LEON's engine was set on "half ahead" and then reduced to "dead slow ahead" at 1311 hours. (Ex. 20, May 10, 1973).

(44) Within approximately 2 - 3 minutes after passing Buoy 18, the Mate on the WILMINGTON GETTY responded to the inquiries of PONCE DE LEON and stated that WILMINGTON GETTY was not underway but at anchor. This transmission took place 2-3 minutes before the collision. (Ex.16, p. 66,67).

(45) At the time of this transmission, the PONCE DE LEON could not have stopped her engines because the flood tide would have carried the PONCE DE LEON down on the WILMINGTON GETTY and struck her broadside. (Ex. 16, p.66,67).

(46) At the time of this transmission the PONCE DE LEON could not come left to avoid a collision since the PONCE DE LEON was already swinging right and left rudder would not overcome the right swing and bring the vessel left past the WILMINGTON GETTY. (Ex.16, p.67, 92, 93).

(47) The only safe alternative was for the PONCE DE LEON to continue right and avoid the WILMINGTON GETTY, considering of course, the possibility of grounding on the shoals off Norton's Point if the PONCE DE LEON came too far right. (Ex.16, p.68).

(48) The PONCE DE LEON continued to come right in an effort to pass ahead of WILMINGTON GETTY and Norton's Point.

(49) Upon visually sighting the WILMINGTON GETTY, Master of PONCE DE LEON ordered hard left in an effort to swing the stern of PONCE DE LEON away from WILMINGTON GETTY. (Ex. 16, p. 91, 92).

(50) The WILMINGTON GETTY and PONCE DE LEON collided at 1314 hours.

COMMENT

Plaintiff's counsel throughout its post trial papers severly criticizes the actions of Master of PONCE DE LEON and would have this Court believe that Captain Meade was a reckless Captain, blindly speeding through fog in total disregard of his fellow mariners. Such could not be further from the truth. Captain Meade has an impeccable record of sea going experience and has been a Master for over 20 years. The PONCE DE LEON was placed, right from the start, in a very unenviable position. The weather conditions were poor; there were numerous vessels transiting Ambrose Channel, both north and south; and PONCE DE LEON was in the middle of a convoy of vessels heading up a very narrow channel into New York Harbor. Captain Meade really had no alternative but to maintain his position in the convoy which was being led by SEALAND BOSTON who had a Sandy Hook Pilot aboard.

Certainly, the precautions by Captain Meade detailed in proposed Finding No. 21 set forth the concern and diligence exerted by him. All of the vessel's deck officers were on duty and the vessel's navigation equipment was being constantly monitored. At his first opportunity, Captain Meade turned right at Buoy 18 to seek a safe anchorage. For all intents and purposes, he had no other choice.

Plaintiff's counsel in its proposed Findings Nos. 15, 21, 22, etc. questions the veracity of Captain Meade specifically as to times and estimates of speeds of PONCE DE LEON. It is submitted that such attacks are grossly

unfair considering the circumstances of that day. The PONCE DE LEON was proceeding at various courses and speeds and it is difficult to clinically analyze the exact speed under such circumstances. This is especially true when the times and distances are so close and, in many instances, not accurately recorded to the precise second while the vessel is navigating under extreme conditions. ( Ex.16, p.71, 72).

Plaintiff's counsel in its proposed Finding No. 22 states that Captain Meade's estimate of PONCE DE LEON's speed at 5 knots at time of collision was "grossly erroneous". It is interesting to note that Captain Brixen, Master of WILMINGTON GETTY, testified on direct examination by Mr. Bowles: (Ex. 10, p.15)

"Q. Did you form an estimate of the speed of the PONCE DE LEON prior to collision as she was approaching you?

A. I did.

Q. What is your estimate?

A. About eight knots."

And previously Captain Brixen testified at United States Coast Guard hearing (Ex. A, p.7):

"Q. Do you have an estimate of her speed when you came up on the bridge and as he went by?

A. My best estimate would be between 6 and 8 knots."

It is submitted that plaintiff's counsel's attacks on veracity of Captain Meade are unfounded. Let Captain Meade's testimony speak for itself and reflect how we may have acted under the circumstance on that day (Ex.16), at page 78:

"We have several targets on the scope now. The SEALAND BOSTON, Norton's Point and

page 79:

the WILMINGTON GETTY. I am jumping from one to the other,

keeping track of all these situations at the same time and where I have said I had seven or eight radar contacts on there, I am watching all this traffic at the same time and coming back again to the GETTY; where there has been a slight change in the bearing, there is not enough information for me to determine whether she is stationary or not...At that point, I realized I had --there was several targets on the scope, as much as seven or eight, but I realized I had two that I had to watch at the same time still thinking the GETTY was underway.

page 80:

People would be calling out information. The man on the other radar would call out some information. I had popped out on the bridge, hoping for a break in the fog.

As I say, this fog was not stationary. It was blowing across in segments. I'd see a break, jump on the bridge."

Certainly these are not the actions of a reckless ship's Master, blindly speeding through fog in total disregard of other vessels and his fellow mariners as alleged by plaintiff.

Dated: New York, New York
October 29, 1975

Respectfully yours,

DOUGHERTY, RYAN, MAHONEY,
PELLEGRINO & GIUFFRA
Attorneys for Defendants
Office and P. O. Address
576 Fifth Avenue
New York, NY 10036

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK 89

---

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

-against-

73 Civ 3480 (RHL)

SS PONCE DE LEON, her engines, tackle, etc., Sun Leasing Co., and Transamerican Trailer Transport, Inc.,

Defendants.

---

DEFENDANT'S PROPOSED CONCLUSION'S OF LAW

(1) This is a case of admiralty and maritime jurisdiction and this court has jurisdiction over the subject matter and the parties. Article III, Sec.2, United States Constitution; 28 U.S.C. § 1333.

(2) At the material times, the WILMINGTON GETTY and the PONCE DE LEON were upon the inland waters of the United States and their duties were prescribed by the Inland Rules of the Road, 33 U.S.C. § 171 et seq. and by the Vessel Bridge-To-Bridge Radio-Telephone Regulations, 33 U.S.C. § 1201 et seq. and 33 C.F.R. § 26.01 et seq.

(3) The collision was caused by the negligence of the WILMINGTON GETTY in that the WILMINGTON GETTY was improperly anchored and obstructing the entrance to the only safe anchorage in the area. The presumption that negligence arises when a moving vessel collides with an anchored vessel only applies when a vessel is properly anchored. Ross v. Merchants and Miners Transportation Co., 104 Fed. 302 (1st Cir.), Graves v. Lake Michigan Car Ferry Transportation Co., 183 Fed. 378 (7th Cir.) When a vessel is not anchored in a proper anchorage, the courts have held that such anchored vessel was solely at fault. United

19790

States v. St. Louis & Mississippi Valley Transportation Company, 184 U.S. 247, La Bourgogne, 86 Fed. 475, (2nd Cir.), Griffin on Collision, Sec. 149.

(4) Further, the WILMINGTON GETTY failed to take action which was within her power to avoid the collision. A vessel at anchor has a duty to take action, if it can, to avoid a collision. If she had the power to avoid the accident, she should do so. Sun Oil Company v. SS Georgel, 245 F.Supp. 537 (S.D.N.Y. 1965) The Ailsa, 76 Fed. 868, aff'd. 86 Fed. 475 (2nd Cir. 1896), The Richmond, 63 Fed. 1020 (2nd Cir. 1894), Victorias Milling Co. v. S/S Gulport, 166 F. Supp. 396 (S.D.N.Y. 1958).

(5) The WILMINGTON GETTY negligently failed to make proper use of her radar in violation of Article 29, Inland Rules of the Road, 33 U.S.C. § 221. Although the PONCE DE LEON was observed by radar five (5) minutes before the collision, no plot was made to determine the course, speed, or closest point of approach to WILMINGTON GETTY. As a consequence, those in charge of WILMINGTON GETTY were ignorant of the fact that PONCE DE LEON was on a collision course. Reasonable use of her radar would have permitted the WILMINGTON GETTY to let go her anchor chain and drift backward, thereby averting the collision. It is a serious fault to fail to make proper use of radar regarding the positions and movements of nearby vessels. Afran Transport Co. v. The Bergechief, 170 Fed. Supp. 893 (S.D.N.Y. 1960) (Levet J.) aff'd. 274 F.2d 469, 475 (2nd Cir. 1960), Ove Skou Rederi A/S v. Nippon Yusen Kaisha, Ltd. 1971 A.M.C. 470 (Supreme Court of Canada).

(6) The WILMINGTON GETTY clearly contributed to the

collision with PONCE DE LEON. It is the rule that if the fault of both vessels contributed to the accident, the loss must be divided between them. Liability for such damage is to be allocated among the parties proportionately to the comparative degree of their fault. Further, such damages shall be allocated equally when the parties are equally at fault or when it is not possible fairly to mearsure the comparative degree of fault. U.S.A. v. Reliable Transfer Co., Inc.-U.S.- (1975), 43 U.S.L.W. 46104.

Respectfully submitted,

DOUGHERTY,RYAN, MAHONEY,
PELLEGRINO & GIUFFRA
Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

- against -

SS PONCE DE LEON, her engines, tackle, etc., Sun Leasing Co. and Transamerican Trailer Transport, Inc.,

Defendants.

73 Civil 3480 (RHL)

IN ADMIRALTY

PLAINTIFF'S COMMENTS ON DEFENDANTS' PROPOSED FINDINGS OF FACT

(1-6) No comment.

(7) This proposed finding and defendants' comments thereon are grossly misleading. Buoy 6 is about 5 miles from the collision position, and there is no proof as to the distance of visibility at that point. A much more meaningful comparison would be to compare the speeds of the two ships in the alleged congested area between Buoy 14 to the collision position. The record shows the WILMINGTON GETTY proceeded safely while the PONCE DE LEON did not. The PONCE DE LEON proceeded from Buoy 14 to the collision position at an average speed of 10.5 to 12 knots - grossly excessive for the circumstances. The WILMINGTON GETTY proceeded from Buoy 14 to Buoy 18 at an average speed of only 4.8 knots. From Buoy 18 to her anchor (collision) position she proceeded at an average speed of only 3.2 knots. Referring to Ex. 5, the WILMINGTON GETTY's bridge bell book page for May 10, 1973, the relevant entries are:

| | |
|---|---|
| 0822 | L/B #14 [Abeam Buoy 14] |
| 0824 | Half Ahead |
| 0826 | Slow Ahead |
| 0827 | Stop |
| 0837.5 | Dead Slow Ahead L/B #18 [Abeam Buoy 18] |
| 0851 | Stop |
| 0854 | Half Astern |
| 0856 | Let Go Port Anchor. |

The distance between Buoys 14 and 18 is about 1.25 miles and the time interval is 15.5 minutes. Her average speed was thus only about 4.8 knots. From Buoy 18 to the collision (anchor) position is about one mile and the time interval is 18.5 minutes. Thus her average speed between Buoy 18 and the anchor position is only about 3.2 knots. The WILMINGTON GETTY had no difficulty in slowing and stopping her engines upon approaching the area in which she intended to anchor. Defendants' misleading attempts to criticize the WILMINGTON GETTY do them no credit. Clearly if the PONCE DE LEON had followed the safe and reasonable procedures followed by the WILMINGTON GETTY's master - this collision could not have occurred. Plaintiff's criticisms of both Captain Meade and Captain Dervin are well justified.

(8) The WILMINGTON GETTY's master prudently avoided Anchorage Area 25 because of radar contacts he saw there.

(9) No comment.

(10 & 11) The PONCE DE LEON completed her swing at 1255 hours. While her position north and south changed slightly with the tide, she settled parallel to the channel and about 375 yards clear of it. The WILMINGTON GETTY stopped swinging before the PONCE DE

LEON got within 2 miles of her which occurred at about 1303 hours. It is significant to note that defendants finally concede approximately when the PONCE DE LEON first sighted the WILMINGTON GETTY, i.e., about 1300 hours. This is in marked contrast to defense counsel's erroneous "recollections" at trial T. 97, T. 101. (See Plaintiff's Proposed Findings of Fact 13-16, 31 and 36.) At first sight at about 1300 hours the PONCE DE LEON clearly was about 2 miles from the WILMINGTON GETTY.

(12) The WILMINGTON GETTY made a radio broadcast at the time she anchored to advise other vessels of her intention. This radio broadcast was required under the Vessel Bridge to Bridge Radio Act, 33 U.S.C. § 1201 et seq. and 33 CFR § 26.01 et seq. Since she had no intention to move, she had no duty to make numerous periodic broadcasts of her condition - well outside the channel. All other vessels had passed clear without the need for such broadcasts. In any event, the PONCE DE LEON learned in time to avoid collision that the WILMINGTON GETTY was anchored.

(13 - 15) The WILMINGTON GETTY's position is not relevant. The PONCE DE LEON saw her long before collision and the PONCE DE LEON had ample room to go around her safely. (See Plaintiff's Proposed Finding of Fact 12.)

(16 - 20) The precise degree of readiness of the WILMINGTON GETTY's engines is not relevant. In the conditions existing she had no legal duty to have them ready for "instantaneous" movement - unless she was required to anticipate the PONCE DE LEON's gross negligence - which is not the law. Because of the radio assurances given by the PONCE DE LEON's master, the

WILMINGTON GETTY's mate apparently never considered using her engines. Defendants continue to ignore the vital fact that the PONCE DE LEON's master grossly misled the WILMINGTON GETTY's mate. There were "just seconds" between visual sight and collision and no time to move even if the WILMINGTON GETTY's engines had been on standby. (See Plaintiff's Proposed Findings of Fact 28 and 40-45.)

(21) No comment.

(22 - 24) Defendants improperly continue to ignore the radio communications between the ships. (See Plaintiff's Reply Memorandum, pp.12-16 and pp.17-23 .)

(25) No comment.

(26) The estimate of the WILMINGTON GETTY's mate was "two minutes". Captain Dervin was never on the ship and has no basis for any opinion.

(27) Defendants continue to ignore the radio communications. They have failed to show when - under the circumstances existing at and before the collision - the anchor chain should have been let out. Plaintiff has shown that because of the radio communications there was no reason to move the WILMINGTON GETTY until visual sight just seconds before collision - when there was no time to act.

(28) The photographs show a long scrape along the PONCE DE LEON's port side. This confirms her high speed. The only reason the WILMINGTON GETTY's mate did not take action to move the WILMINGTON GETTY was that he properly relied on the PONCE DE LEON's master to carry out the PONCE DE LEON's stated intentions.

(29 - 30) Simply not true. (See Plaintiff's Post-Trial

Memorandum, pp. 11-16 and pp. 21-37 and Plaintiff's Reply Memorandum, pp. 11-17 and pp. 17-23 .) 96

(31) The persons navigating the PONCE DE LEON were grossly negligent.

(32 - 35) Just because other vessels violated the moderate speed rule, it is no excuse for the PONCE DE LEON's grossly excessive speed in this congested area. The WILMINGTON GETTY had no difficulty slowing to a safe, moderate speed as she approached the anchorage area. If the PONCE DE LEON had proceeded as cautiously, including making proper use of her radar, this collision could not have occurred.

(36) No comment.

(37 - 38) No one has suggested that the PONCE DE LEON should anchor in Ambrose Channel. But the Anchorage Area extends for 1.5 miles. (Chart #540 - measurement.) No good reason has been shown why the PONCE DE LEON could not have proceeded past the WILMINGTON GETTY before entering the Anchorage Area. The PONCE DE LEON saw the WILMINGTON GETTY on her two radars long before the PONCE DE LEON turned out of the channel. There is no excuse for running down the WILMINGTON GETTY in the circumstances.

(39) This is grossly misleading. It is inconsistent with Defendants' Proposed Findings 10 and 11. The actual facts are outlined in Plaintiff's Proposed Findings of Fact 13-16. The PONCE DE LEON's master sighted the WILMINGTON GETTY long before reaching Buoy 18. He had no difficulty tracking both the ship alleged to be the SEALAND BOSTON and the WILMINGTON GETTY. Unfortunately he erred in his assessment of the WILMINGTON GETTY because he did not plot.

(40 - 41) Simply not true. See Plaintiff's Proposed Finding of Fact 21. If such calls had been made before the PONCE DE LEON turned out of the channel and if no response was received - all the more reason why the PONCE DE LEON should never have turned out of the channel at Buoy 18 which unnecessarily created a close quarters situation with a ship whose course, speed and intention were not known.

(42) This illustrates the gross error of the PONCE DE LEON's master in his use of radar. The WILMINGTON GETTY was, of course, stationary.

(43) No comment.

(44 - 48) Even after the PONCE DE LEON negligently turned out of the channel the vessels communicated in ample time for the PONCE DE LEON alone to avoid collision. (See Plaintiff's Proposed Findings of Fact 28 and 29.) Also see Ex. 24, the PONCE DE LEON's Sea Trial Report, pages 28 and 29. Apparently the PONCE DE LEON can be turned in a complete circle in approximately 2000 feet. The PONCE DE LEON apparently is much more maneuverable than her master wishes to admit. No reason has been shown why the highly maneuverable PONCE DE LEON, with two radars and one-half nautical mile (3000 feet) could not have avoided this collision. The only conclusion possible is that her master acted in a grossly negligent manner.

(49) The left turn of the PONCE DE LEON turned her toward the WILMINGTON GETTY - into collision with the WILMINGTON GETTY's anchor chain and bow.

(50) No comment.

Further Comment

It seems incredible that a ship as well equipped as the PONCE DE LEON - with two radars and a radio - could run down an anchored vessel seen long before the collision, and spoken to in time for the PONCE DE LEON to have avoided collision - just as she had assured the WILMINGTON GETTY she would do. The only possible explanation is that the PONCE DE LEON's navigation was grossly negligent - as clearly appears from the actual facts, when measured against the well-established law.

Primarily the PONCE DE LEON proceeded at an excessive speed of 10.5 to 12 knots in dense fog. Her master's "estimates" of 5 knots are patently wrong as shown by her own records. Either he did not know her actual speed - clear negligence in any event - or he fabricated a low estimate to try to avoid well-founded charges of excessive speed. Captain Meade on the PONCE DE LEON had the means available to determine the PONCE DE LEON's speed accurately. [Captain Brixen made a visual estimate only. Estimates are clearly subject to substantial error.]

Secondly the PONCE DE LEON's master clearly made no proper use of her radar. He saw the WILMINGTON GETTY long before collision and he had the means to determine that the WILMINGTON GETTY was stationary. His duty was to stop and make time for a plot if necessary. In any event, his duty was to avoid a close quarters situation - especially with a ship whose course, speed and intention were unknown. Instead, he blindly turned out of the channel at Buoy 18 creating a risk of collision - where none existed before. Then after assuring the WILMINGTON GETTY by radio that the PONCE DE LEON would keep clear - the PONCE DE

LEON ran her down. Defendants' belated arguments (in many cases grossly mistaken) cannot change the facts or the law.

The facts and the law are clear. The PONCE DE LEON should be held in sole fault for this collision.

Dated: New York, N. Y.
November 7, 1975

Respectfully submitted,

KIRLIN, CAMPBELL & KEATING
Attorneys for Plaintiff

13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

-against-

SS PONCE DE LEON, her engines, tackle, etc., SUN LEASING CO. and TRANSAMERICAN TRAILER TRANSPORT, INC.,

Defendants.

73 Civil 3480

OPINION, FINDINGS OF FACT and CONCLUSIONS OF LAW.

#4/4/005

APPEARANCES:

Kirlin, Campbell & Keating
Attorneys for Plaintiff
120 Broadway
New York, N.Y. 10005
Lawrence J.Bowles,
Of Counsel.

LJB ✓
RHB ✓
SS ✓

Dougherty, Ryan, Mahoney, Pellegrino & Giuffra
Attorneys for Defendants Sun Leasing Co. and Transamerican Trailer Transport, Inc.
576 Fifth Avenue
New York, N.Y. 10036
Lawrence J.Mahoney,
Vincent J.Barra,
Of Counsel.

Lost Record

79750

LEVET, D. J.

This suit is a claim in admiralty brought by Getty Oil Company (Eastern Operations), Inc. ("Getty") against Transamerican Trailer Transport, Inc. ("Transamerican") which grows out of a collision

between a vessel owned by plaintiff, known as "Wilmington Getty," with a vessel owned by defendant Transamerican, known as "Ponce De Leon," on May 10, 1973.

The case was tried to the court without a jury on September 19, 1975.

After hearing the evidence presented by the parties, examining the exhibits, the pleadings, the briefs and the Proposed Findings of Fact and Conclusions of Law submitted by counsel, this court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Getty Oil Company (Eastern Operations) Inc. was and still is a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at 660 Madison Avenue, New York, New York and was and still is the owner and operator of the steam tanker Wilmington Getty. The Wilmington Getty is a steam tanker 13,659 gross tons, 583.5 feet in overall length and 74.2 feet in breadth. On May 10, 1973 she was laden with a cargo

of about 20,000 tons of heating oil and gasoline and her drafts were 31 feet 9 inches forward and 31 feet 11 inches aft. She was engaged on a voyage from Delaware City, Delaware, bound for Bayonne, New Jersey. (Stipulation #2.)

2. Sun Leasing Co. and Transamerican, defendants, were and still are domestic corporations organized and existing under and by virtue of the laws of one of the states of the United States with offices and places of business at 358 St. Marks Place, Staten Island, New York. Sun Leasing Co. is the owner of the Ponce De Leon and Transamerican was the operator of the said vessel.

The Ponce De Leon is a steamship of 15,134 gross tons, 700 feet in overall length, 92.2 feet in breadth. The distance from her bridge to her bow is approximately 350 feet. Her steam turbine engines are of 32,000 horsepower. At the material times she was laden with a cargo of trailers to drafts of 21 feet 8 inches forward and 24 feet 6 inches aft. Her displacement was thus approximately 19,400 tons. She was engaged on a voyage from San Juan, Puerto Rico to the Transamerican Terminal, Staten Island, New York. (Stipulation #3.)

3. During the morning of May 10, 1973, the Wilmington Getty was proceeding up Ambrose Channel. At 0807 hours the Wilmington Getty passed Buoy R "6" in Ambrose Channel and at 0817 hours the Wilmington Getty passed Buoy R "10" in the aforesaid Ambrose Channel. (Ex. 5, May 10, 1973, Ex. 3.)

4. Dense fog had pervaded Ambrose Channel during the early morning hours of May 10, 1973, resulting in a congestion of vessels seeking ingress to New York Harbor. (See Stipulation #4.)

5. As a result of the foggy conditions the Master of the Wilmington Getty decided to anchor while awaiting the fog to clear. As the Wilmington Getty proceeded up the channel, her radar indicated that the various anchorage areas were crowded and her master decided to anchor off Norton's Point, Brooklyn; at approximately 0856 the Wilmington Getty anchored off Norton's Point with three shots (290 feet) of anchor chain in the water. (Ex. 5; Ex. 10, p. 26.)

6. The site where the Wilmington Getty so anchored was outside the normal anchorage area, known as Anchorage 25, and was located at the head of the customary navigable throughway used by vessels approaching the only safe anchorage after exiting Ambrose Channel at Buoy 18. (Ex. 16, pp. 50, 60.) Such a position, therefore, was not a usual nor customary place of anchorage for vessels awaiting assistance from tugs or for awaiting inclement weather conditions to improve. (Ex. 16, pp. 58, 60; Tr. 47, 48.)

7. Upon anchoring the vessel the master of the Wilmington Getty put the vessel's engines on "Finished With Engines" ("F.W.E."). The Wilmington Getty takes approximately three to five minutes to get underway when the engine telegraph is on F.W.E. (Ex. 1,pp.27, 43; Ex. 10, p. 12.)

8. Had the engines of the Wilmington Getty been placed on "Standby Engines" the vessel would have been capable of immediate movement. (Ex. 1, pp. 27, 48; Ex. 10, p. 12.)

9. The Wilmington Getty's watch officer, Mr.Farago, was not given any instructions regarding the status of the engines on May 10, 1973, when he relieved the watch. (Ex. 1, p. 26; Ex. 10, p. 23.)

10. A security call which advised all vessels in the vicinity that the Wilmington Getty was anchored in a position outside the normal anchorage area was transmitted by the Wilmington Getty immediately upon anchoring. (Ex. 10, pp. 20-22.)

11. However, this security call was never repeated by the Wilmington Getty at any time before the collision. (Ex. 10, pp. 20-22

12. At all times after the Wilmington Getty anchored, a seaman was placed on her bow to ring her bell forward for five seconds at intervals not exceeding one minute. This was the proper fog signal for a vessel at anchor under the United States Inland Rules, Article 15(d), 33 USCA § 191(d). A licensed mate was stationed on her bridge to monitor her bridge-to-bridge radio telephone which was set on Channel 13. (Farago, Ex. 1, pp. 14, 15; Brixen, Ex. 10, pp. 11, 22-23.)

13. At approximately 1146, on May 10, 1973, the Ponce De Leon arrived at Ambrose Light Tower. (Ex. 16, pp. 17, 54.) At that time the master of the Ponce De Leon decided to follow the SS Sealand Boston up Ambrose Channel and maintained a distance of approximately one mile astern of the Sealand Boston. Three or four other vessels proceeded astern of the Ponce De Leon at the same speed and kept a fixed relative position behind the Ponce De Leon. (Ex. 16, pp. 55-57.)

14. During all material times herein the Ponce De Leon sounded a prolonged blast on her fog horn at intervals of less than one minute, which was the proper fog signal for vessels underway pursuant to the United States Inland Rules, Article 15A, 33 USCA § 191(a). The Ponce De Leon's bridge-to-bridge radio telephone was set on Channel 13 and was being monitored as required by the Bridge to Bridge Telephone Act, 33 USCA § 1201 et seq. (Ex. 16, pp. 19, 20, 33, 48, 59; Ex. 26.)

15. The current in Ambrose Channel was flooding with a velocity of approximately .5 knots at material times herein. (Brixen, Ex. 10, pp. 16, 17; Meade, Ex. 16, p. 40.)

16. At approximately 1300 hours on May 10, 1973 the Wilmington Getty completed swinging with the tide and the vessel was then headed approximately $160^{\circ}$-$168^{\circ}$, parallel to Ambrose Channel, a different position than the position at which the Wilmington Getty originally anchored at 0856 hours. (Ex. 1, pp. 12-14; Ex. 10, pp. 16, 26, 27.)

At such a locale, the Wilmington Getty was in close proximity to the outer perimeter of Ambrose Channel.

17. At approximately 1300 hours on May 10, 1973 the Ponce De Leon was proceeding up Ambrose Channel. She was equipped with two radars, both of which were functioning at all material times. (Ex. 16, p. 20; Ex. 26.)

18. The master of the Ponce De Leon, Captain Meade, learned by radio that his tugs were then fogbound. Unable to proceed further without the help of tugs, the master of the Ponce De Leon decided to leave the channel and anchor in Anchorage Area 25 while awaiting more favorable weather conditions and the assistance of tugs to continue toward his destination. (Exs.2, 21.)

19. Just prior to coming abeam of Buoy 18,the master of the Ponce De Leon observed a target at the extreme edge of his radar, which was set at a two mile scale. This target was lateridentified as the Wilmington Getty. (Meade, Ex. 16, pp. 22-23, 46.)

20. At the time of this first radar sighting, the Sealand Boston was in close proximity to the Wilmington Getty. This was because the stern of the Wilmington Getty had swung with the tide and had relocated near the perimeter of Ambrose Channel. The propinquity of the Wilmington Getty to the Sealand Boston gave the illusion of

only one target as observed on the radar of the Ponce De Leon. (Ex. 16, pp. 22, 24.)

21. At the time of this first radar sighting, the Ponce De Leon was traveling at 10.5 to 11 knots. (Ex. 16, pp. 27-29.) This figure is computed by calculating speed based on the Ponce De Leon's arrival time at certain fixed locations. The Ponce De Leon passed Buoy 14 at ~~1203~~ 1302 hours. (Ex. 16, p. 27; Ex. 18; Ex. 20, pages for May 10, 1973.) Buoy 18 was passed at 1309 hours. The distance between Buoy 14 and Buoy 18 was 1.25 miles on May 10, 1973.

22. Under the weather and traffic conditions in the area of Ambrose Channel on May 10, 1973, the Ponce De Leon was traveling at an excessive rate of speed in traveling the distance between Buoy 14 and Buoy 18.

23. Prior to passing Buoy 18, the master of the Ponce De Leon, Captain Meade, estimated that the target observed on radar, later identified as the Wilmington Getty, was approximately .5-.7 miles off Norton's Point, which was at a point to the east of the buoys which marked Ambrose Channel. Thus, Captain Meade should have known that the Wilmington Getty was located outside the main shipping channel with respect to vessels proceeding through Ambrose Channel and the Narrows. (Ex. 16, pp. 24, 46.)

24. Captain Meade continued to observe the Wilmington Getty on radar but made no manual plot of its relative positions. (Meade, Ex. 16, pp. 25, 26.)

25. At approximately 1308-1309, the Ponce De Leon reached Buoy 18, and her course was changed to the right to permit her to leave Ambrose Channel and proceed to a safe anchorage. (Ex. 20, May 10, 1973.)

26. At the same time (1308-1309 hours), the Ponce De Leon was observed on radar by the watch officer of the Wilmington Getty. (Ex. 1, p. 18.) At that time the watch officer of the Wilmington Getty, Mr. Farago, considered the Ponce De Leon a "threat" to the Wilmington Getty when the Ponce De Leon began to turn right just after passing Buoy 18. (Ex. 1, pp. 41, 55.)

27. The watch officer of the Wilmington Getty continued to observe the Ponce De Leon on radar until the time of the collision. At no time, however, did the watch officer of the Wilmington Getty make a manual plot of the movements of the Ponce De Leon. (Ex. 1, pp. 22, 42, 43.)

28. After the Ponce De Leon turned out of Ambrose Channel and was beyond Buoy 18, there was a radio conversation between the Wilmington Getty and the Ponce De Leon, although it is unclear as to

who initiated this communication. This conversation took place at approximately 1311 and at the time the Ponce De Leon was .5-.6 miles away from the Wilmington Getty. (Ex. 16, p. 42; Ex. 1, p. 19.)

29. During this communication between the Wilmington Getty and the Ponce De Leon the Wilmington Getty, through watch officer Farago, informed the Ponce De Leon, through Captain Meade, that the Wilmington Getty was at anchor off Norton Point. The Ponce De Leon, through Captain Meade, replied by stating that the Ponce De Leon would pass between the Wilmington Getty and Norton Point. (Ex. 16, p. 42; Ex. 1, p. 19.)

30. At 1311, the engine speed of the Ponce De Leon was ordered reduced to "Dead Slow Ahead." (Ex. 20.) The Ponce De Leon took five minutes to travel from Buoy 18 to the point of collision, a distance of one mile. Thus, it can be calculated that the Ponce De Leon averaged 12 knots in traveling from Buoy 18 to the point of collision. (Ex. 16, pp. 32, 33.) Captain Meade, Master of the Ponce De Leon, admitted this was not a low speed. (Ex. 16, p.39.) Considering the weather and traffic conditions then existing, the Ponce De Leon was traveling at an excessive rate of speed in journeying the distance from Buoy 18 to the point of collision.

31. The Wilmington Getty was anchored with her port anchor; two crew members were located on the bow in the vicinity of the anchor. The anchor chain was secured by a pawl and wheel brake. (Ex. 1, pp. 28-30, 52.) I find that the anchor could have been "let go" by lifting the pawl and turning the wheel brake. This procedure would have taken approximately two minutes. (Ex. 1, pp. 52-53; Tr. pp. 69, 70, 117.)

32. Had the brake on the anchor on the Wilmington Getty been released before the collision, the Wilmington Getty would have begun to drift astern with the current and away from the ultimate point of collision. (Ex. 1, p.56; Tr. pp. 73, 88.)

33. There was no proof adduced at trial to show that the crew of the Wilmington Getty made any attempt to release the anchor brake before the collision.

34. As the Ponce De Leon approached the Wilmington Getty, the officers of the Ponce De Leon, Potocka, Benson and Ahorrito, all testified that they heard fog signals from the Wilmington Getty before visual sight of her and they further testified that Captain Meade was so informed. (Potocka, Ex. 28, p. 5; Benson, Ex. 29, p. 6; Ahorrito, Ex. 30, p. 4.) Captain Meade denied he ever heard the Wilmington Getty's fog signals or that they were ever reported to him. (Meade, Ex. 16, pp. 43-45.)

35. Captain Meade visually sighted the Wilmington Getth "just seconds" before the collision. The officers of the Ponce De Leon estimated that the Wilmington Getty became visible at a distance of 25-100 feet. (Meade, Ex. 16, p. 48; Potocka, Ex. 28, p. 3; Benson, Ex. 29, p. 3; Ahorrio, Ex. 30, p. 3.)

36. Upon visually sighting the Wilmington Getty, Captain Meade ordered a hard left in an effort to swing the stern of the Ponce De Leon away from the Wilmington Getty. (Ex. 16, pp. 91, 92.)

37. At no prior time to the collision did the Ponce De Leon attempt to stop or reverse her engines. (Meade, Ex. 16, p. 45.) Captain Meade admitted that at the time of visually sighting the Wilmington Getty, if he had backed the Ponce De Leon's engines full speed astern he would not have had time to stop the Ponce De Leon before the collision. (Meade, Ex. 16, pp. 48, 49.) I attribute the inability to stop the Ponce De Leon to the excessive speed at which the vessel was then traveling.

38. At approximately 1314 hours the Ponce De Leon collided with the Wilmington Getty, causing damage to the Wilmington Getty's bow and the Ponce De Leon's port side. (See Stipulation #6.)

39. In the opinion of the court, the Ponce De Leon contributed to the collision by the following acts:

1. The speed of the Ponce De Leon was excessive from Buoy 18 to the point of collision;

2. The Ponce De Leon failed to make a manual plot on its radar upon first sighting the Wilmington Getty;

3. The Ponce De Leon failed to stop her engines upon first hearing the fog signal of the Wilmington Getty or upon first observing the Wilmington Getty.

40. In the opinion of the court, the Wilmington Getty contributed to the collision by the following acts:

1. The failure of the Wilmington Getty to issue additional security calls after anchoring;

2. The failure of the Wilmington Getty to keep her engines on "Standby" while anchored in a hazardous locale;

3. The failure of the Wilmington Getty to make a manual plot after observing the Ponce De Leon on radar;

4. The failure of the Wilmington Getty to "let go the anchor chain" after observing the Ponce De Leon on radar.

DISCUSSION

On May 19, 1975 the Supreme Court issued an historic decision in the case of U.S. v. Reliable Transfer Co., Inc., 421 U.S. 397 (1975). Reliable overturned the century-old divided damages rule in maritime collision cases which was first expressed by the United States Supreme Court in The Schooner Catherine v. Dickinson, 58 U.S. (17 How.) 170 (1854).

Under that rule, courts were required to equally divide property damage resulting from a maritime collision or stranding whenever both parties were guilty of contributory fault, whatever the degree of that fault. Reliable now directs the trial court to allocate fault proportionately based on the comparative fault of the respective parties. Thus, courts may now apportion fault on a more equitable basis. As was stated by Justice Stewart, writing for the Court in Reliable, at page 405:

> " It is no longer apparent, if it ever was, that this solomonic division of damages serves to achieve even rough justice. An equal division of damages is a reasonably satisfactory result only where each vessel's fault is approximately equal and each vessel thus assumes a share of the collision damages in proportion to its share of the blame, or where proportionate degrees of fault cannot be measured and determined on a rational basis. The rule produces palpably unfair results in every other case. For example, where one ship's fault in causing a

> collision is relatively slight and her damages small, and where the second ship is grossly negligent and suffers extensive damage, the first ship must still make a substantial payment to the second. 'This result hardly commends itself to the sense of justice any more appealingly than does the common law doctrine of contributory negligence. . . .' G.Gilmore & C.Black, The Law of Admiralty 528 (2nd ed. 1975). . . ."

Prior to the decision in Reliable the only way a court could avoid dividing damages was by application of the major-minor fault rule. This doctrine was excellently described in footnote 2 of N.M. Patterson & Sons, Limited v. City of Chicago, 209 F.Supp. 576 (1962) at page 583. It was stated therein,

> " The 'major-minor fault' rule, usually expressed in terms of an exception to the alleged 'rule' of equal division of damages in cases of mutually-caused collision, allows the court to impose the total amount of damages upon the ship more at fault, either by excusing a recognized fault of the minor offender, or by resolving all factual doubts in favor of the minor offender, once the court has determined that it is, in fact a minor offender. The Great Republic, 90U.S. (23 Wall.) 20, 23 L.Ed. 55 (1874); The City of New York, 147 U.S. 72, 13 S.Ct. 211, 37 L.Ed. 84 (1893); The Victory, 168 U.S. 410, 18 S.Ct. 149, 42 L.Ed. 519 (1897); Griffin, The American Law of Collision § 245 (1949); Staring, Contribution and Division of Damages in Admiralty and Maritime Cases, 45 Cal. L. Rev. 304 (1957). By this method the court could thus excuse completely a fault which it felt to be 'minor' and impose full liability upon an offender who obviously is not fully to blame, a result which certainly poses an alternative with possibilities as harsh as that which divides damages equally where the respective faults are other than equal." ( Emphasis added.)

On this same point is an interesting article by A. Chalmers Mole and Lyman P. Wilson entiled, A Study of Comparative Negligence, which appeared in 17 Cornell L.Q. 333 (1932):

> " The rule of equal division of loss in such case either holds this wrong-doer entirely free from all

> guilt and liability, thus condoning slight but nevertheless real contributory negligence, or it charges her with one-half of the total loss, in effect holding her as guilty as the other party, whose negligence may have been gross and inexcusable. An allocation of the damages in the ratio of, say, one-fifth to four fifths, appeals much more strongly to our sense of justice." 17 Cornell L.Q. 333 at page 352. ( Emphasis added.)

In the most recent edition of the Suffolk University Law Review, it was said:

> " The 'major-minor fault' rule is sometimes used to mitigate the harshness of the divided damages rule in a situation where one vessel is guilty of merely minor technical blame shown not to have contributed to the cause of the collision. In such cases, the error of the second vessel will be ignored, and the vessel guilty of gross error will bear the entire burden of the loss. Furthermore, where the active fault of one vessel far overshadows only the passive fault of omission of a second vessel, ' the interests of justice are best served by condemning the more culpable vessel completely.' The major criticism of this rule, as with the doctrine of error in extremis, is that it is inexact and nebulous in its definition, and in application it is anything but standardized. Furthermore, it can hardly be regarded as more just to hold blameless a vessel which was actually at fault, albeit in a relatively minor degree, than it is to make a vessel only minimally at fault bear one-half the damages of a collision." 10 Suffolk U.L.R. 116, at pages 122,123 (1975). ( Emphasis added.)

It is readily apparent that the Reliable case has ramifications beyond the mere apportioning of damages. For example, acts by a vessel which were previously excused under the major-minor rule might now subject the same vessel to some degree of liability under Reliable. As Judge Murphy stated in In re Adams' Petition, 125 F.Supp. 110 ( D.C.S.D.N.Y., 1954 ) at page 114,

> " The patent injustice of equal division has led to judicial straining in some cases to let off entirely the ship only slightly to blame under a major- minor fault doctrine in collisions. After a half-century of application in nearly all other leading maritime nations, the rule of proportional division has been found workable, not unduly burdensome upon triers of fact and not giving rise to a multiplicity of appeals." ( Emphasis added.)

Unquestionably, as Judge Murphy aptly points out in Adams, courts in some instances have excused slight fault by a vessel by use of the major-minor rule.

Assume, arguendo, a vessel which is involved in a collision is 20% at fault. Prior to Reliable, the court would have to either divide damages ( see In re Adams, supra ) or attempt to fit the facts into the major-minor rule where minor fault would be excused. See an interesting article on this point in 50 Tulane L.R. 148 at pages 149, 150, wherein it was said:

> " The failure of the United States to adopt a rule of proportionate damages has frequently produced unusually harsh results. Consider a collision between two vessels. Assume, for example, that vessel A was 80 per cent at fault and suffered $100,000 in damages, while vessel B was 20 per cent at fault and suffered $10,000 in damages. Under the divided damages rule, the damages would be totaled, divided by two, and payment would be ordered in such a manner as to make the loss equal on both sides. Since the damage to vessel A exceeded the moiety, she would not be required to compensate the other vessel. But vessel B, even though only 20 per cent at fault, would be required to pay $45,000 in addition to making her own repairs. Thus, seeking to avoid the application of the divided damages rule, litigants often engage in what has been referred to as transatlantic forum shopping."

Today. under Reliable, such slight fault should not be overlooked. However, if courts use past collision case law where major-minor was/ applie

as stare decisis in post-Reliable lawsuits, such a result could occur. A fortiori, maritime collision case law must be re-evaluated and re-analyzed. If courts follow a policy of stare decisis et non quieta movere, the purpose of Reliable will never be fulfilled. Courts must be wary not to apply major-minor precedents as a basis for deciding post-Reliable cases since such applications will destroy apportionment in maritime collision lawsuits. As was said in 36 Louisiana L.R. 279 at page 295, ( 1975 ),

> " By recognizing the unfairness of requiring a vessel greatly at fault to pay the entire damages of a mutual fault collision, the Reliable opinion strongly implied that the major-minor principle is of no further use."

With this background, I will now discuss the liabilities of the respective parties.

LIABILITY of the PONCE DE LEON

The Ponce De Leon was travelling at an excessive rate of speed from Buoy 18 until the point of collision, see Finding of fact #39(1). Dense fog had pervaded Ambrose Channel during the early morning hours of May 10.1973, see Finding of Fact #4; visibility could best be described as nil.

Under the circumstances, the Ponce De Leon had to be guided by Article 16 of the Inland Rules, 33 USC §192(a), which states in part:

> " Every vessel shall in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed, having careful regard to the existing circumstances."

Courts throughout the country are in accord as to the meaning of moderate speed. This court wrote back in 1960:

> "It is well settled that in a fog a vessel must proceed at a moderate rate of speed, and upon hearing the signal of an approaching vessel ahead must stop its engines and navigate with caution. . . ." Afran Transport Co. v. The Bargechief, 170 F. Supp. 893 at page 898, affd 274 F.2d 459.

Judge Chase succinctly stated the rule in The Tuxedo, 77 F2d 354 at page 355:

> "What is moderate speed under such circumstances is a rate of speed not in excess of that which will permit a vessel to stop within the distance she can see another vessel with which she may be in danger of collision. The Colorado v. The H.P. Bridge, 91 U.S. 692, 23 L.Ed. 379; The Nacoochee, 137 U.S. 330, 11S.Ct. 122, 34 L.ED. 687; Appeal of Central R. Co. of New Jersey (C.C.A.) 22 F2d 275.

This same standard is applicable today. The Master of the Ponce De Leon admitted in his own deposition that he was unable to stop

(See Finding of Fact No. 37.)
his vessel upon sighting the Wilmington Getty./ The fact that the Ponce De Leon was equipped with two radars is inapposite to the issue of speed under inclement weather conditions. The Radio Telephone Regulations ( 33 CFR §26.01(b) ) do not relieve a vessel from the obligation to proceed with moderate speed during foggy conditions, Thus, the Ponce De Leon was in violation of Article 16 prior to and at the time of collision in that it did not proceed with moderate speed under the foggy conditions apparent on May 10,1973.

Referring to Finding of Fact # 39(2), no crew member of the Ponce De Leon manually plotted the location of the Wilmington Getty after its initial sighting. The proof is undisputed as to this point. Such inaction on the part of the Ponce De Leon is violative of Article 29, 33 USC §221, which states:

> " Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

The Court of Appeals, in affirming this court in Afran Transport Co. v. Bergechief, supra at page 475, wrote:

> "It is likely that there was time for plotting, and this would have revealed the exact speed and course of the Burgan. We cannot be sure of this. Although her speed was diminishing, the estimate of five knots could not have been much out of the way, and it would seem to be a good general rule that if a radar pip shows another vessel nearby and forward on your starboard bow, you should stop and make the time for a plot." ( Emphasis added

Under the circumstances of poor visibility and crowded traffic conditions, it was negligence on the part of the Ponce De Leon to

fail to make a manual plot of the location of the Wilmington Getty.

The Ponce De Leon further violated Article 16 by failing to stop her engines or navigate with caution when the fog signals of the Wilmington Getty became audible. The master of the Ponce De Leon denied hearing the fog signals of the Wilmington Getty. However, three officers of the Ponce De Leon (Potocka, Ahorrio and Benson) admit that they heard fog signals just prior to the collision in question. (See Finding of Fact #34.) The failure of Captain Meade to hear the Wilmington Getty's fog signals did not relieve the aforementioned officers from taking evasive action. Captain Meade testified that none of his officers reported fog signals to him prior to the collision. (See Finding of Fact No.34.) Consequently, the Ponce De Leon cannot escape responsibility for failure to act. Thus, the action, or more precisely, inaction, taken by the master and officers of the Ponce De Leon upon hearing the Wilmington Getty's fog signals was in violation of Article 16 of the Rules of the Road.

Unquestionably, the statutory violations and negligent navigation of the Ponce De Leon were a proximate cause of the collision which occurred on May 10, 1973 between the Ponce De Leon and the Wilmington Getty.

Accordingly, I find that the Ponce De Leon was guilty of fault which was a proximate cause of the collision which took place on May 10, 1973 at approximately 1314.

LIABILITY of the WILMINGTON GETTY

As was heretofore mentioned, the acts of a vessel must be viewed in a different light as the result of U.S.A. v. Reliable Transfer, supra. Courts must take a fresh look as to what constitutes negligence so that the true purpose of Reliable may be achieved.

This court cannot say that the Wilmington Getty was negligent in anchoring where she did on the morning of May 10,1973. It is undisputed that such a locale was not an ordinary nor customary place of anchorage for vessels using Ambrose Channel on the morning of May 10,1973. However, under the circumstances of inclement weather and crowded traffic conditions, it cannot be said that the Wilmington Getty did not act reasonably under the circumstances in choosing its anchorage site. On the other hand, the Wilmington Getty realizing her precarious anchorage locale, should have taken steps to advise subsequently arriving vessels of her situation. The General Prudential Rule, 33 U.S.C.A. § 221,states:

> " Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case." ( Emphasis added.)

In this regard, I find that the Wilmington Getty should have issued periodic security calls after anchoring. The record shows that the Wilmington Getty issued a security call immediately upon

anchoring but issued none thereafter, See Findings of Fact # 10,11. Such additional security calls would have given advance warning of the Wilmington Getty's status to oncoming vessels. Considering the weather and traffic conditions, such additional security calls would not have placed an undue burden on the Wilmington Getty considering its choice of a hazardous place of anchorage.

Secondly, the engines of the Wilmington Getty should have been placed on "Standby" to provide the Wilmington Getty with instantaneous maneuvering power in the event of an emergency. It is undisputed that the Wilmington Getty was "Finished with Engines" at the time of the collision. (See Finding of Fact #7.) It is clear that the watch officer of the Wilmington Getty, Mr. Farago, considered the Ponce De Leon a threat to the Wilmington Getty when he first sighted the Ponce De Leon on radar after the Ponce De Leon had turned right after passing Buoy 18, see Finding of Fact #26. Had the engines of the Wilmington Getty been kept on "Standby", effective evasive action could have been taken by the Wilmington Getty.

This court is familiar with The Charles Hubbard, 229 Fed. 352, ( 6th Cir., 1916 ),which states on page 356:

> " It is argued by counsel that if the Pollack had had her steam up and her engines in condition for immediate moving of the vessel, she could have backed away from the Hubbard when the collision was threatened, and so have avoided the accident. There is no evidence whatsoever in the record that it was customary for a ship lying at anchor, as the Pollack was, to maintain engines and boilers in condition for such immediate movement, and since no such decided cases have been produced as authority for this claim, it cannot be allowed. For these reasons, this third claimed error must be overruled." ( Emphasis added.)

It should be noted that the instant case does not reflect the "customary" situation of a ship at anchor. Although the Wilmington Getty might have been justified because of weather and traffic conditions in anchoring where she did, this does not alter the fact that the Wilmington Getty elected to anchor in a dangerous locale. It was incumbent that the Wilmington Getty take precautions which were suitable to the abnormally hazardous circumstances of her place of anchorage.

Thirdly, the Wilmington Getty should have "let go the anchor chain" after observing the Ponce De Leon on radar. In Sun Oil Co. v. SS Georgel, 242 F.Supp. 537 ( S.D.N.Y. 1965 ), this court pointed out that a vessel at anchor must take action, if she can, to avoid a collision. It was stated therein;

> " A vessel at anchor which can take action to avoid collision must do so. But an anchored vessel is at first entitled to rely on moving vessels to avoid her. The Lady Franklin, 14 Fed.Cas. p. 934 ( No. 7,984 ) ( D. Mass. 1873 ). Her first duty is to remain at rest. The Ceylon Maru, 266 F. 396 ( D. Maryland, 1920) reversed on other grounds, 281 F. 536 (4th Cir. 1922). If she has the power to avoid the accident, she should do so." 242 F. Supp. 537 at page 545. (Emphasis added.)

On this same point is Wells v. Armstrong, 29 Fed. 216, ( S.D.N.Y. 1886 );

> " Doubtless less vigilance is required of a vessel at anchor. Ordinarily, a vessel anchored in a proper place, in the day-time, and in fair weather, is not expected, or legally required, to be on the watch, and to stand prepared to take measures to avoid vessels underway, and having control of their motions. The Lady Franklin, 2 Low. 220; The Rockaway, 19 Fed. Rep. 449. But under exceptional circumstances, where the vessel underway is subject to special difficulties or

> embarrassments in her navigation, some care and precautions on the part of the vessel at anchor may become obviously prudent and necessary that would not otherwise be obligatory." 29 Fed. 216, at 219. ( Emphasis added. )

Unquestionably, watch officer Farago considered the Ponce De Leon to be a threat upon sighting the Ponce De Leon on radar, see Finding of Fact # 26. The Wilmington Getty was aware that the Ponce De Leon intended to pass between the Wilmington Getty and Norton Point, see Finding of Fact # 29. Had the Wilmington Getty " let go the anchor chain," the Ponce De Leon would have been provided with additional latitude in which to effect her passage between the Wilmington Getty and Norton Point. The Wilmington Getty was anchored with her port anchor; two crewmembers were located on the bow in the vicinity of the anchor, see Finding of Fact # 31. It is undisputed that the anchor could have been " let go " in approximately two minutes, see Finding of Fact #31. Under the circumstances, the Wilmington Getty had ample time to " let go the anchor chain " after observing the Ponce De Leon on radar and sfter the radio communication which took place at 1311 on May 10,1973 and thereby avoid a collision.

In Villain & Fassis E. Compania v. Tank Steamer E.W. Sinclair, 207 F.Supp. 700 ( S.D.N.Y. 1962 ), it was said:

> " Where a vessel apprehends danger and does nothing within her power to avoid or mitigate a collision, she is hardly discharging her duty to take the precautions required by the special circumstances of the case." 207 F.Supp 700 ( S.D.N.Y. 1962) at 710,711. ( Emphasis added. )

The Wilmington Getty was guilty of fault in failing to

properly utilize its radar upon sighting the Ponce De Leon. The applicable statutes and case law dealing with the failure to make a manual plot were discussed earlier, and a repetition of this law is unnecessary.

It should be noted that counsel for the Wilmington Getty has cited numerous cases to sustain its position that none of the aforementioned failures on its part constitutes fault. These cases were decided prior to the decision in Reliable. This court has stated its opinion as to the effects of Reliable on cases formerly held to be stare decisis in the area of maritime collision. Consequently, in light of Reliable, this court cannot excuse nor overlook the faults or omissions of the Wilmington Getty.

Accordingly, I find that the Wilmington Getty was guilty of fault which was a proximate cause of the collision which took place on May 10,1973 at approximately 1314.

CONCLUSIONS OF LAW

1.The court has jurisdiction of the parties and subject matter of this case.

2. The Wilmington Getty and the Ponce De Leon were each at fault in the collision which occurred at Ambrose Channel on May 10,1973 at 1314 hours.

3. Getty Oil Company ( Eastern Operations ), Inc. is entitled to an interlocutory decree against SS Ponce De Leon, her engines, tackle, etc., Sun Leasing Co. and Transamerican Trailer Transport, Inc. for 80 % of the damage sustained by the Wilmington Getty as a result of the collision, together with costs and such interest, if any, as this court may determine upon the entry of the final decree herein.

4. The Sun Leasing Co. and Transamerican Trailer Transport, Inc. are entitled to an interlocutory decree against Getty Oil Company ( Eastern Operations ), Inc. for 20% of the damages sustained by the Ponce De Leon as a result of the collision, together with costs and such interest, if any, as this court may determine upon the entry of the final decree herein.

5. The amount of damage to the respective vessels will be determined by this court.

Submit interlocutory decree on notice in accordance with the foregoing.

Dated: New York, N.Y.
March 5, 1976

Richard H Levet
United States District Judge

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GETTY OIL COMPANY (EASTERN OPERATIONS),

Plaintiff,

-against-

SS PONCE DE LEON, her engines, tackle, etc., SUN LEASING CO., and TRANSAMERICAN TRAILER TRANSPORT, INC.,

Defendants.

U.S. DISTRICT COURT FILED MAR 26 1976 S.D.OF N.Y.

73 Civ. 3480

AMENDMENT TO OPINION, FINDINGS OF FACT AND CONCLUSIONS OF LAW DATED MARCH 5, 1976

#4/2/005

LEVET, D.J.

My opinion in the above-entitled action, dated March 5, 1976, is hereby amended as follows:

Beginning in the 14th line from the top of page two there is given the following:

"Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to keep a proper lookout, * * *

This is amended to read:

"Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, ***

So ordered.

Dated: March 26, 1976

(SGD) RICHARD H. LEVET
United States District Judge

79790

129

UNITED STATES DISTRICT COURT

UNITED STATES COURTHOUSE

NEW YORK, N. Y. 10007

15-13

CHAMBERS OF
JUDGE RICHARD H. LEVET

April 12, 1976.

Dear Judge PIERCE:

Re: Getty Oil Co. v. SS Ponce De Leon
73 Civil 3480

I am planning to resign as a judge of this court on or about April 26, 1976.

In the last several weeks, for various reasons, I have been unable to try any jury cases as I have been compelled to work on non-jury post-trial opinions under certain unfavorable conditions. In certain non-jury cases, as reported, damages have been referred to a magistrate to hear and report. A number of cases have been settled but no stipulations have been filed therein. As a result, I regret that I am now forced to return the above-entitled case to you. I am notifying Mr. Ray Sexton of this procedure, which has been approved by Chief Judge Edelstein.

The present status of this case is as follows:

I filed my Opinion, Findings of Fact and Conclusions of Law and directed an interlocutory judgment which has been signed and filed on April 5, 1976. In accordance with the opinion and interlocutory judgment, unless the attorneys agree to settle the issue of damages within 90 days from April 5, 1976, the issue of damages is to be referred to a magistrate to hear and report.

74790

Sincerely yours,

Richard H. Levet

United States District Judge

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
NEW YORK, N. Y. 10007

CHAMBERS OF
JUDGE RICHARD H. LEVET



CC: Mr. Ray Sexton

Chief Judge David N.Edelstein

Kirlin, Campbell & Keating, Esqs.
120 Broadway
New York, N.Y. 10005

Dougherty, Ryan, Mahoney, Pellegrino & Giuffra, Esqs.
576 Fifth Avenue
New York, N.Y. 10036

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

-against-

SS PONCE DE LEON, her engines, tackle, etc., SUN LEASING CO. and TRANSAMERICAN TRAILER TRANSPORT, INC.,

Defendants.

FINAL JUDGMENT

73 Civil 3480 (LWP)

The issues on the plaintiff's complaint and the counterclaim of defendants, Sun Leasing Co., and Transamerican Trailer Transport, Inc., for damages arising out of the collision in New York Harbor on May 10, 1973 between the SS WILMINGTON GETTY and the SS PONCE DE LEON, having come on for trial before the Honorable Richard H. Levet, and the Court having filed its Opinion, Findings of Fact and Conclusions of Law, dated March 5, 1976, holding the WILMINGTON GETTY 20% at fault and the SS PONCE DE LEON 80% at fault and holding that the plaintiff, Getty Oil Company (Eastern Operations), Inc., should recover 80% of its damages from the defendants and holding that defendants should recover 20% of their damages from the plaintiff, and an interlocutory judgment to that effect having been entered on April 5, 1976,

AND there having been a hearing on damages on September 30, 1976 at which time the parties stipulated that the plaintiff's damages were $146,000, that the defendants' damages were $234,000, and the Court having determined that the plaintiff is entitled to recover interest at 6% on the net balance due to it from the date of the collision, it is

ORDERED, ADJUDGED and DECREED

OFFICE COPY
Kirlin, Campbell & Keating
120 BROADWAY
NEW YORK, N. Y. 10005

(1) that the plaintiff, Getty Oil Company (Eastern Operations), Inc., recover 80% of its damages of $146,000, namely, $116,800 from defendants;

(2) that defendants, Sun Leasing Co., and Transamerican Trailer Transport, Inc., recover 20% of their damages of $234,000, namely, $46,800 from plaintiff;

(3) by reason of the aforesaid recoveries of the aforementioned parties from each other, plaintiff, Getty Oil Company (Eastern Operations), Inc., as owner of the SS WILMINGTON GETTY shall recover the net balance of $70,000, together with interest of $14,350 (at 6% per year from May 10, 1973 until entry of this judgment) on said net balance, for a total recovery of $84,350, with interest on said total sum from the date of entry of this judgment according to law;

(4) that the taxable costs of the parties shall be apportioned in the same ratio as the liabilities heretofore determined.

Dated: New York, N. Y.
October 13, 1976

L. W. Pierce.
United States District Judge

Judgment Entered - 10/22/76.
Raymond F. Burghardt
CLERK

Filed - 11/19/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

-against-

SS PONCE DE LEON, her engines, tackle, etc., SUN LEASING CO. and TRANSAMERICAN TRAILER TRANSPORT, INC.,

Defendants.

NOTICE OF APPEAL OF PLAINTIFF

73 Civil 3480 (LWP)

CERTIFIED COPY
Kirlin, Campbell & Keating
120 BROADWAY
NEW YORK, N. Y. 10005

S I R S:

PLEASE TAKE NOTICE THAT THE PLAINTIFF APPEALS to the United States Court of Appeals for the Second Circuit from the final judgment filed in the United States District Court for the Southern District of New York on October 21, 1976 and entered therein on October 22, 1976, which, among other things, provides for the recovery by plaintiff of only 80% of its damages and for the recovery by defendants of 20% of their damages.

Dated: New York, N. Y.
November 19, 1976

KIRLIN, CAMPBELL & KEATING

By _____
Attorneys for Plaintiff
120 Broadway
New York, N. Y. 10005

TO: Dougherty, Ryan, Mahoney, Pellegrino & Giuffra
Attorneys for Defendants
576 Fifth Avenue
New York, N. Y. 10036

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

GETTY OIL COMPANY (EASTERN OPERATIONS) INC.,

Plaintiff,

-against-

SS "PONCE DE LEON", her engines, tackle, etc., SUN LEASING CO. and TRANSAMERICAN TRAILER TRANSPORT, INC.,

Defendants
----------x

NOTICE OF CROSS-APPEAL OF DEFENDANTS

73 Civ. 3480 (LWP)

OFFICE COPY
Kirlin, Campbell & Keating
120 BROADWAY
NEW YORK, N. Y. 10005

SIRS:

PLEASE TAKE NOTICE THAT THE DEFENDANTS APPEAL to the United States Court of Appeals for the Second Circuit from the final judgment filed in the United States District Court for the Southern District of New York on October 21, 1976 and entered therein on October 22, 1976, which, among other things, provides for the recovery by plaintiff of 80% of its damages and for the recovery by defendants of only 20% of their damages.

Dated: New York, New York
November 4, 1976

DOUGHERTY, RYAN, MAHONEY,
PELLEGRINO & GIUFFRA, ESQS.

BY: _____
A MEMBER OF THE FIRM

Attorneys for the Defendants
Office and P. O. Address
576 Fifth Avenue
New York, New York 10036

TO: KIRLIN, CAMPBELL & KEATING, ESQS.
Attorneys for Plaintiff
Office and P. O. Address
120 Broadway
New York, New York 10005

PL Ex 1

USA 33e-ed 75
(ED. 4-23-71)
PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
1-4-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GETTY OIL COMPANY (Eastern Operations), INC.

Plaintiff

-against-

SS PONCE DE LEON, her engines, tackle, etc., SUN LEASING CO., and TRANSAMERICAN TRAILER TRANSPORT, INC.

Defendant

73 Civil 3480

- - - - - - - - - - - - - -

Deposition of GEORGE FARAGO, taken on Wednesday, August 14th, 1974, at 1:00 p.m., at the U. S. Public Health Service Hospital, Baltimore, Maryland, before Donald F. Coolahan, Notary Public.

- - - - - - - -

APPEARANCES:

Lawrence Bowles, Esquire
On behalf of the Plaintiff

Vincent J. Barra, Esquire
On behalf of the Defendants

Reported by:

D. F. Coolahan

# I N D E X


| WITNESS: | | PAGE: |
|---|---|---|
| George Farago | | |
| | By Mr. Bowles | 3, 69 |
| | By Mr. Barra | 24, 72 |


# E X H I B I T S


| PLAINTIFF'S NO. | | PAGE: |
|---|---|---|
| 12 | book | 5 |
| 13 | bell book | 6 |
| 14 | bell book | 7 |
| 15 | chart | 7 |
| 16 | statement | 7 |
| 17 | chart | 8 |
| 18 | diagram | 24 |
| 19 | diagram | 71 |

STIPULATIONS

It is stipulated and agreed by and between counsel for the respective parties that the reading and signing of this deposition by the witness be and the same are hereby waived.

It is further stipulated and agreed that the filing of this deposition with the Clerk of Court be and the same is hereby waived.

- - - - -

GEORGE FARAGO,

called for examination by the Plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION BY MR. BOWLES:

Q What is your name, sir?

A George Farago.

Q Where do you live?

A At the present, my legal mailing address is 3 Journals, No. 3 Journals Square, Jersey City, New Jersey.

Q How old are you, sir?

A Fifty.

MR. BOWLES: Let me make a statement for the record. We are taking this deposition prior to trial at the United States Public Health Service in Baltimore. Mr. Farago is a patient here and has been since May, is that correct, sir?

THE WITNESS: May 16th.

MR. BOWLES: And he is, at times experiences substantial pain from an undiagnosed ailment and it may be necessary to suspend the deposition during any period that he feels any excess of such pain, and he is under medication for pain at this time, is that correct?

THE WITNESS: That's correct.

Q Mr. Farago, on May 10th, 1973, by whom were you employed?

A Getty Oil Company.

Q In what capacity?

A Third Mate.

Q Of what ship?

A WILMINGTON GETTY.

Q Were you her watch officer at the time of a

collision on that date, May 10th, 1973, with the PONCE DE LEON?

A Yes.

Q Do you hold any licenses issued by the United States Coast Guard?

A I have a mariner's document and second mate's license, unlimited oceans.

Q How long have you been alicensed officer, approximately?

A Since July of '47.

Q And how long have you been going to sea?

A Thirty years.

Q Do you have a radar endorsement on your license?

A Yes, I do.

MR. BOWLES: At this time, I would like to introduce some documents. Will you mark this Plaintiff's Exhibit 12 for identification, please?

(Book entitled Getty Oil Company, Marine Section, Deck Log Book, was then marked Plaintiff's Exhibit 12 for identification.)

Q Mr. Farago, is this the deck log book of the WILMINGTON GETTY covering theperiod of May 10th, 1973?

A Yes, it is.

MR. BOWLES: Will you mark this Plaintiff's Exhibit 13 for identification, please.

(The bell book, SS WILMINGTON GETTY, starting 4/13/73 was then marked Plaintiff's Exhibit 13 for identification.)

Q This is the bridge bell book of the WILMINGTON GETTY covering the period of May 10th, 1973?

A Yes, it is.

Q Would you recognize the engine bell book of the WILMINGTON GETTY?

A I have no knowledge of the engine room bell book. I wouldn't keep it.

MR. BOWLES: Do you want to mark this as an exhibit any way?

MR. BARRA: You might as well mark it for identification.

MR. BOWLES: We'll mark this Plaintiff's Exhibit 14 for identification. It's my understanding it is the engine room bell book of the WILMINGTON GETTY covering the period of May 10th, 1973.

(Engine room bell book of the WILMINGTON GETTY covering the period of May 10th, 1973 was then marked Plaintiff's Exhibit 14 for identification.)

MR. BOWLES: Will you mark this Plaintiff's Exhibit 15 for identification, please.

(Chart of New York harbor, Gravesend Bay, marked Plaintiff's Exhibit 15 for identification.)

Q Mr. Farago, do you recognize this chart?

A Yes, I do.

Q Was it the chart in use on the bridge of the WILMINGTON GETTY on May 10th, 1973?

A Yes, it is.

MR. BOWLES: Mark this Plaintiff's Exhibit 16 for identification, please.

(Statement of Mr. G. Farago, Third Mate, dated May 12th, 1973, was then marked Plaintiff's Exhibit 16 for identification.)

Q What is this document, Mr. Farago, referring to Plaintiff's Exhibit 16 for identification?

A This is my statement of what occurred during my watch on May 10th.

Q It's dated May 12th, 1973, is that correct?

A Well, the 12th, yes.

Q Was this typed up on the ship?

A Yes, it was. The radio operator typed that up.

MR. BOWLES: Mark this Plaintiff's Exhibit 17 for identification, please.

(C & GS Chart 369 was then marked Plaintiff's Exhibit 17 for identification.)

Q Mr. Farago, I show you the chart now marked Plaintiff's Exhibit 17 for identification. Can you tell us what that is, with particular reference to the markings on the chart off Norton's Point, Brooklyn?

A This is a position chart that I made at the inquest that was held by the Coast Guard.

Q Did you make it before the inquest or at the inquest?

A It was at the inquest, wasn't it? At the inquest.

Q The chart is not marked as an exhibit at any Coast Guard inquest, and if I may lead the witness, do you recall telling me that you had made this chart at some time after the collision to show the Master what occurred?

A Yes. This was made after the collision.

Q You may have marked another chart at the inquest at the Coast Guard?

A Yes.

Q Mr. Farago, on May 10th, 1973, was the WILMINGTON GETTY equipped with a course recording device?

A No, it wasn't.

Q Well, did it have an operable course recording device?

A No, it didn't.

Q Did it have a box that used to have a course recorder in it?

A Yes, it did.

Q What was the situation with respect to that?

A The inner working parts were out.

Q Do you know wher they were taken out?

A No, I don't. They were out when I joined the

vessel.

Q When did you join the vessel first, approximately?

A No, I can't recall that.

Q Do you recall what time you went on watch on May 10th, 1973?

A Well, I usually relieve the watch ten minutes of 12:00.

Q Did you do it on that date approximately at that time?

A Yes.

Q Mr. Farago, referring to the documents that we have marked for identification, you are free to refer to any of them in answering any of the questions that are asked of you.

Where was the WILMINGTON GETTY when you went on watch on May 10th, 1973, about noontime?

A Well, she was anchored off Norton's Point, Gravesend Bay.

Q Can you show us her approximate position, referring to the chart marked Plaintiff's Exhibit 15 for identification?

A Approximate position, yes.

Q You are pointing to some pencil notations, one marked 1130 hours, is that correct?

A Yes.

Q After going on watch did you take any fix of the GETTY's position?

A Yes, I did. I immediately checked the bearings and checked the position on the chart and they coincided and it satisfied me that the vessel was where she was --

Q Pointing to those positions already on the chart?

A Yes.

Q Did you make any marks on the chart yourself at that time?

A No, I didn't.

Q Why not?

A It's a general practice on the ship that if a bearing or an anchorage doesn't change too much, you don't make a new position. You superimpose it on the --

Q Markings?

A If she falls on the previous anchorage bearing, you don't touch it.

Q What were the weather conditions when you went on watch?

A Thick fog.

Q Do you have an estimate of the distance of visibility?

A I estimated distance at 200 yards.

Q Was that a constant figure or did the fog vary from that figure at times?

A It varied.

Q Up or down? In other words, was it less sometimes and more other times or how would you describe it?

A Yes, less sometimes and more at times.

Q What was the condition of your ship with respect to the tide? What direction was your ship pointing when you went on watch, and did it change thereafter?

A The vessel was swinging to the flood tide.

Q And at some time did she line up with the flood tide?

A Yes. I estimated the lineup at approximately 12:55 or so.

Q And what direction did you line up with the flood

tide, approximately? Do you know the compass heading?

A The compass heading was direct, approximately 160, 163, in that area.

Q Did you have your radar in use?

A Yes, I did.

Q What scale did you have it set on?

A Three-mile scale.

Q Could you see the buoys in the channel, particularly Buoys 18, 16 and 14?

A No, I couldn't.

Q With your radar?

A With radar, yes, clearly defined on radar.

Q Where were those buoys with respect to your vessel on your radar?

A Off of the starboard bow, starboard side.

Q Did you have occasion to check that line of buoys or check the buoys with your cursor, with respect to your cursor?

A Yes, constant check with the --

Q What did you see with respect to the buoys and your cursor?

A Well, the cursors were lined up parallel. I had lined the cursors up parallel to the Ambrose Channel buoys, lane of buoys.

Q And were the line of buoys dead-ahead or to the right of your vessel or to the left of your vessel?

A To the right.

Q Could you estimate how far to the right of your vessel?

A Not with any great accuracy, but they were to the right. I had marked them to the right.

Q Was anyone else on watch on the bridge with you at 1255 and thereafter?

A On the bridge?

Q Yes.

A No, not on the bridge.

Q Was there anyone on watch on the bow?

A Yes, there was a seaman on the bow.

Q What was he doing?

A He was ringing the bell, fog signal.

Q What signal was he sounding?

A He was sounding the prescribed fog signal, one

rapid ring of the bell for five seconds, intervals not to exceed one minute.

Q And what were you doing on the bridge?

A Well, I was in constant watch with the -- check with the radar, the lookout, the signals that were coming in from other ships that were passing at the time.

Q Is your ship equipped with radio, a VHF radio?

A Yes, Channel 13.

Q Were you monitoring that channel?

A Yes, Channel 13 was being monitored.

Q What type radar did you have?

A Deca.

Q Did you have it in a true picture or relative picture?

A Relative picture.

Q In other words, in relative, would the top of the radar scope be in the direction of your vessel, the direction of the bow of your vessel?

A That's correct.

Q Prior to the time the PONCE DE LEON became involved with your vessel, did you see otherships pass your

vessel?

A I didn't see any, no.

Q On your radar?

A On the radar, yes.

There was heavy traffic in the channel at the time.

Q And how many ships passed while you were on watch after 12 o'clock, do you recall approximately?

A I'd have to say several; maybe six, seven, eight.

Q Is it correct that they all passed clear?

A All passed clear, yes.

Q Did you see any of those vessels visually?

A No, I didn't.

Q Did you see the shadow of any vessel passing visually?

A Before or after the collision?

Q Before collision.

A No, no, I did not.

Q Did you see any after collision?

A I saw the shadow of a vessel -- just a second. I saw the shadow of a vessel before the collision.

Q Do you recall how long before the collision?

A No, I don't.

Q Do you know the distance that vessel passed?

A No. I didn't mark the distance.

Q In other words, did you look at the radar as she passed?

A No. I was on the wing of the bridge at the time and I watched her.

Q You mentioned that you were monitoring Channel 13 on the VHF radio. Prior to the collision, and again before the PONCE DE LEON came into your area, did you overhear any conversations from other vessels or between other vessels concerning the WILMINGTON GETTY?

A Yes, I did.

Q What did you hear?

A Several vessels had mentioned the fact that there was a vessel, or vessel or a tanker anchored off Norton's Point.

Q How many such conversations did you hear, do you recall?

A At least three.

Q Did youtalk to any of those ships yourself?

A No, I didn't.

Q How long before collision -- strike that.

How long before you first became aware of the PONCE DE LEON was the last conversation you overheard between other vessels concerning the vessel -- your vessel anchored off of Norton's Point?

A Before or --

Q Before you became aware of the PONCE DE LEON, how long before you became aware of the PONCE DE LEON was the last conversation you heard between some other vessels concerning the vessel anchored off of Norton's Point?

A I couldn't mark that time at all.

Q When did you first become aware of the PONCE DE LEON?

A I became aware of the PONCE DE LEON when she was opposite Buoy 18 and she was having a conversation with another vessel. I interrupted the conversation and she acknowledged that she was the PONCE DE LEON.

Q How did you know she was off Buoy 18?

A Because she -- the vessel that was off Buoy 18 made a sharp right turn.

Q How do you know that? Did you see that on your radar?

A Yes.

Q And you mentioned that you interrupted a conversation that the PONCE DE LEON was having. What was the subject of that conversation that you interrupted?

A There was an inquiry between the two vessels about the vessel that was anchored off Norton's Point.

Q And the PONCE DE LEON was one of the vessels that was in this conversation?

A Yes.

Q What did you do? You said you interrupted. What did you do, what did you say at that time?

A At that time I interrupted and called the PONCE DE LEON and informed her that I was the WILMINGTON GETTY at anchor off Norton's Point.

Q And what did -- what response did you get to that, if any?

A The PONCE DE LEON came back and said he realized that there was a vessel off Norton's Point and it was his intention to pass to the inside.

Q When you say inside, you mean your vessel and Norton's Point?

A That's correct.

Q Were you looking at the radar at that time during this period of conversation?

A Yes, because the radar and the radio are adjacent to each other.

Q And what was the approximate distance to the PONCE DE LEON when you first told her that you were anchored, the WILMINGTON GETTY anchored off of Norton's Point, do you recall?

A No, I can't recall that.

Q Mr. Farago, do you recall testifying at the Coast Guard in this matter on May 11th, 1973?

A Yes, I do.

Q And referring to -- strike that reference to the Coast Guard.

Mr. Farago, referring to the chart, Plaintiff's Exhibit 17 for identification, you have testified you prepared this chart for the captain of the WILMINGTON GETTY to show him what happened at some time right after the

collision?

A Yes.

Q You have on the chart the notation, Channel 13 radio communication. Is that the position of the PONCE DE LEON at the time of your Channel 13 radio communication?

A Yes.

Q And is this your anchorage position?

A Yes.

Q Would you mark the distance between those two positions, please, and tell us what that is on the chart? A little over six-tenths of a mile?

A Yes.

Q The answer is a little over six-tenths of a mile according to the chart. Do you recall how long before the collision, what interval of time before the collision you first had this radio communication with the PONCE DE LEON?

A Yes. It was -- I looked at the clock -- it was eight minutes past on our chronometer. At 13 after, the collision occurred.

Q So the interval would be about five minutes, is that correct?

A Five minutes.

Q Well, have you described your entire radio communications with the PONCE DE LEON?

A Yes. I contacted her, she acknowledged my contact and then I repeated that I was the WILMINGTON GETTY at anchor off Norton's Point and we signed off.

Q After the radio communication with the PONCE DE LEON, did you continue to observe her on radar?

A Yes, I did.

Q Did you make any determination as to whether she would pass clear or not?

A Yes, I did.

Q What did you determine from your radar?

A From my observations on radar which, from the point of contact, radio contact, was almost continuous and she looked like she was going to pass ahead of me.

Q Before collision, did you visually sight the PONCE DE LEON?

A Yes, I did.

Q How long before collision, approximately, do you recall?

A The bridge to the bow length; I'd say 300 feet.

Q Well, in an interval of time; can you estimate the interval of time that you sighted her before the collision?

A The time was -- I mean I couldn't estimate time because it was in seconds, not minutes.

Q It was a very short time?

A Very short time.

Q Where was she with respect to your vessel when you first sighted her?

A She was four points on the starboard bow.

Q And did you take any action at that time?

A I blew the danger signal.

Q What signal is that?

A Four short rapid blasts.

Q Is that on your ship's whistle?

A Yes.

Q Did you observe how -- did the PONCE DE LEON thereafter strike the WILMINGTON GETTY?

A Yes. She first struck the anchor chain and then she struck the bow.

Q What was the approximate angle of collision?

Can you show us that; perhaps if we made a diagram? If I show you, make an outline of a ship which will be the -- I'll put WG for WILMINGTON GETTY, could you draw in an outline of a ship, showing the PONCE DE LEON at the moment of collision, approximately? An arrow will be sufficient.

A This angle here.

Q Okay. You have drawn an arrow across the bow of the WILMINGTON GETTY?

A Yes.

Q To show the PONCE DE LEON, is that correct?

A Yes.

MR. BOWLES: Will you mark this the next exhibit, please, Plaintiff's Exhibit 18 for identification?

(The diagram marked by the witness indicating the angle was then marked Plaintiff's Exhibit 18 for identification.)

MR. BOWLES: I have no further questions at this time.

EXAMINATION BY MR. BARRA:

Q Mr. Farago, what were your duties on the bridge on May 10th, 1973? What specifically are your duties?

A Specifically at anchor in a fog?

Q In this particular situation, for example.

A Well, it's to maintain an alert watch, see that all fog regulations and procedures were being properly carried out.

Q What fog regulations and procedures are you specifically referring to?

A Well, that the fog signal was being sounded on the bow.

Q Anything else?

A Radar watch, monitoring radio, keeping a good lookout myself.

Q Do you check the fathometer when you're at watch?

A Fathometer?

Q Yes.

A No.

Q Do you have one on the WILMINGTON GETTY?

A Yes.

Q Do you have any standard operating procedures or instructions on the WILMINGTON GETTY as to what procedures

you should follow at anchor, any written instructions?

A Oh, yes.

Q And where are these kept, on the bridge?

A On the bridge.

Q Are these ever supplemented by additional instructions by the captain or preceding watch officers or whatever?

A Yes. The Master always leaves any special instructions that he wants followed outin writing, and the mates initial this.

Q Is this like a night order book?

A Yes, like a night order book.

Q Were any special instructions given on this particular day?

A No, not on this particular day it wasn't.

Q So, as far as you know, only the routine, standard instructions for the GETTY at anchor were applicable at that time?

A That's correct.

Q What was the intention of the GETTY as far as going into her berth? What was the plan on when she would

go into her berth that particular day?

MR. BOWLES: If you know..

A I don't know. I mean, we were at anchor waiting for the fog to lift.

Q There was no time that you recall set for when the GETTY would go into her berth?

A Well, on the original --

Q Originally?

A Originally there was, yes.

Q And what was that, if you know.

A I don't recall that, no.

Q Do you know whether the engines -- what position the engine telegraph was in when you came on board the bridge, when you came up to the bridge?

A Finished with engines.

Q Is this standard operating procedure on the GETTY when you anchor?

A Yes, yes, it is.

Q Is this also the same procedure when you are anchored in fog?

A That's what we were referring to.

Q All right. Let me ask you another question, rephrase it. Do you ever have the situation routinely where the engines are placed on standby engines when you're at anchor?

A If we expect an immediate departure or where the engines are liable to an emergency, they're put on standby.

Q You mentioned that one of the seamen was up on the bow ringing the bell, and I thought you said, on questions from Mr. Bowles, that you would check with him on vessels that were approaching. Was that your testimony?

On questions by Mr. Bowles just now, I think you said there was a seaman on the bow and that his function was to ring the bell and that he would also report to you any vessels that were approaching or in the vicinity?

A No, that wasn't my testimony.

Q I'm sorry. Are you in communication with the man on the bow at all?

A There is no telephone on the bow.

Q There's no telephone on the bow; from the bow to the bridge?

A No, there is not.

Q How would you routinely contact the man on the bow?

A By voice.

Q How far is the bridge from the bow, approximately, in feet?

A 300 feet.

Q And the only means of communication is by voice?

A Well, there are several means of communication, but I've always used voice.

Q What are the other means?

A Well, there is megaphone, there's a whistle ~~whistle~~, there are bells, any means at all to attract his attention.

Q Do you have a standard procedure, like with the whistle or whatever, to get his attention?

A No, there was no standard procedure.

Q Was there any one else on the bow in the proximity of the time of the collision?

A Yes. There was another seaman on the bow.

Q What was his name?

A Hughes.

Q Was he the seaman on watch, on your watch?

A Yes.

Q Do you know what his function was?

A Well, he was performing routine maintenance.

Q This is while he was on watch? He was on watch at this time?

A Yes.

Q And do you know what maintenance he was performing?

A Not specifically, but he was working in the vicinity of the anchor when this --

Q Mr. Farago, you mentioned when you came on watch that you checked the position of the vessel on the chart that was already there when you came on watch and satisfied yourself that the vessel was still in approximately the same position?

A Yes.

Q Now, you also mentioned that the vessel was swinging with the tide, and I think you said that you determined she had stopped swinging at 12:55, is that correct?

A Yes.

Q Did you take any positions at that time to

determine where exactly the vessel was located?

A I was taking anchor bearings at intervals.

Q Well, specifically what I'm honing in on now is the time that the vessel stopped swinging and swung into the flood?

A Yes.

Q I think you said. Did you take a position after that to determine exactly where she was?

MR. BOWLES: The question is did you plot a position or did he check a position, say with the radar or something else?

Q Did you check a position with the radar?

A Yes, I did.

Q Did you plot that position anywhere?

A No, I did not.

Q Was it at a variance from th e position plotted on the chart?

A This is a very large scale chart, and bearings on radar, half a degree would bring it approximately on top. My concern in plotting an anchor position was to assure myself that the anchor was not dragging.

Q Is this because when a vessel swings with the tide there's a possibility that the anchor might drag at that point?

A Well, there's a possibility that the anchor may drag at any time.

Q But is it more of a probability when she was swung in the tide?

A No, I wouldn't say it's -- no. An anchor can drag at any time. A current can increase or decrease, but in plotting an anchor bearing, it's to assure myself that the vessel was not dragging, the anchor chain is not dragging, and I was satisfied that it wasn't.

Q And you did specifically check the position of the vessel after you finished swinging in the tide?

A Yes, I did.

Q And this was sometime after 12:55?

A Yes.

Q How did you determine that the vessel had completed its swing?

A Because she had steadied up.

Q In other words, the heading of the vessel kept

changing and then finally it steadied up?

A Yes.

Q Did the captain or anyone else issue any special instructions with regard to the vessel swinging in the tide?

A No.

Q None whatsoever?

A No. The routine instructions are in the instruction book.

Q In the standard instructions?

A Standard operating procedure at anchor.

MR. BARRA: Mr. Bowles, I have already requested those instructions, but I guess I'll make another request now on the record that I would like to have the instructions, the standard operating instructions, and any special instructions by the Master.

MR. BOWLES: We'll see what exists. Let me ask a question on this. Is there an instruction book on the bridge of the ship or in the chart room somewhere?

THE WITNESS: In the chart room.

MR. BOWLES: What is it called? What is the precise name of it, if you recall?

THE WITNESS: A night order book, anchor procedure book.

MR. BOWLES: Is there a special separate book or anchor procedures, or is it all included in one book?

THE WITNESS: It's all included in one.

MR. BOWLES: Sort of a standard operating --

THE WITNESS: Standard operating procedure.

MR. BOWLES: We'll try to obtain that.

Q All right. Mr. Farago, you mentioned that you were monitoring Channel 13 at all times. You mentioned specifically that you heard the PONCE DE LEON and another vessel discussing the fact that a vessel was at anchor off Norton's Point. Is that a fair reflection of your testimony?

A Yes.

Q How do you know it was the PONCE DE LEON?

A How did I ascertain that it was the PONCE DE LEON?

Q Specifically the PONCE DE LEON talking to another ship about a vessel at anchor off Norton's Point?

A As I said before, I was monitoring and the vessel mentioned in the conversation that she was passing Buoy 18 and when he turned to the right I called the PONCE DE LEON

and he acknowledged to me that he was the PONCE DE LEON. That is how I was positive that this vessel that had turned at Buoy 18 was the PONCE DE LEON.

MR. BOWLES: I don't think that's Mr. Barra's question. Do you want to rephrase it again?

Q I'll ask it again or rephrase it. Mr. Farago, that is not what I'm referring to. I'm referring to -- if we can just concentrate on this aspect of it.

You mentioned that there was some radio communications over Channel 13.

A Yes.

Q By several vessels mentioning that there was a vessel anchored off Norton's Point. I guess you assumed they were talking about your vessel, is that correct?

A Yes.

Q You also mentioned that you understood one of these vessels who was in conversation with another vessel about your ship at anchor, that that was the PONCE DE LEON?

A Yes.

Q My question to you is how do you know that was the PONCE DE LEON involved in those conversations?

A Well, in this conversation to my interruption, the name PONCE DE LEON had been mentioned.

Q Did the ship say this is the PONCE DE LEON?

A The name PONCE DE LEON had been mentioned.

Q Did the ship identify itself as the PONCE DE LEON or was the PONCE DE LEON just mentioned?

A Yes, the vessel was speaking at the time identified himself as the PONCE DE LEON.

Q And what did he say?

A It was in reference to this vessel that was anchored off Norton's Point.

Q He said a vessel was anchored off Norton's Point?

A Whether he said it or the other vessel said it, but it was in reference to this vessel that was anchored off Norton's Point. That's the point that I interrupted at, when he, when he just turned and had been --

Q When the turn had been made?

A Yes.

Q You interrupted?

A Yes. This conversation was going on between the PONCE DE LEON and another vessel.

Q Do you know what vessel that was?

A No, I don't.

Q Do you know if that vessel identified itself?

A He may have, but I don't recall the other one.

Q Now, you mentioned that you were monitoring Channel 13 at all times. Did you ever switch to other channels?

A No, I didn't.

Q Did you ever converse with any other ships while on watch prior to the collision?

A No, I did not.

Q Did any ship try to contact you?

A No.

MR. BOWLES: You mean before the PONCE DE LEON?

Q Before the PONCE DE LEON.

A No.

Q Mr. Farago, you mentioned that you observed a ship prior to collision, the shadow of a ship pass off your starboard side?

A Yes.

Q Do you have any idea how many minutes before

collision that that was?

A No, I don't.

Q Well, let's take it in reference, if you can recall, to the time that you spotted the PONCE DE LEON turning on your radar. Was it prior to that that you saw this ship pass by your starboard side?

A Yes, because it was before the collision.

Q So it was at least five minutes before?

A Well, I couldn't say it was at least five minutes before because --

Q It was prior to your noticing the PONCE DE LEON turning on the radar?

A Well, it was prior to the collision.

Q Well, yes, but my question is, was it prior to your observing the PONCE DE LEON turning to the right?

A Well, I couldn't, I couldn't say, but I would say that it was because --

Q To the best of your recollection is all I'm asking.

A To the best of my recollection, I was completely occupied with the PONCE DE LEON after this right turn,

completely occupied with the PONCE DE LEON.

Q You mentioned that you were observing radar during your watch and you had the cursor set on the line of buoys of Ambrose Channel, is that correct?

A Parallel, yes.

Q Do you recall the first time that you observed the contact that turned out to be the PONCE DE LEON?

A No, I don't.

Q How many contacts did you have on your radar at one time?

MR. BOWLES: At what point?

Q At any point while you were on watch.

MR. BOWLES: The maximum he had on his radar at any point on watch?

MR. BARRA: Yes, the maximum he had.

MR. BOWLES: At any point during his hour and twenty minutes or so?

Q Yes.

A Well, I couldn't positively say how many contacts were on the scope at any one time, but there were always several contacts on.

Q From the time you got on watch until the time of collision?

A Yes.

Q Would you say it was approximately about the same throughout that period of time?

A Traffic was, I'd say heavy at the time, in that period of time.

Q I think you mentioned on some questions by Mr. Bowles that quite a few vessels did pass by the GETTY while you were on watch, both inbound and outbound?

A Yes.

Q Can you tell me, if you recall, how many vessels passed by after you swung into the flood tide, which was approximately 12:55?

A No, I couldn't.

Q Do you know if any vessels passed by after you swung into the flood tide, other than the PONCE DE LEON?

A No, I couldn't be positive on that.

Q Well, was it one or more than one?

A Well, I'd say at least one or two.

Q Would the vessel that you sighted initially have

been one of those vessels? I am talking about from the time you swung into the flood until the time of collision.

A My time was completely occupied with the PONCE DE LEON from the time that I ascertained that she was in -- that she was a danger to my vessel.

Q You mentioned -- excuse me, continue.

A So I would say that it was, this shadow was five minutes before, at least.

MR. BOWLES: Five minutes before you first noticed the PONCE DE LEON?

Q I'll ask the question. Was this five minutes before you became occupied with the PONCE DE LEON?

A Yes, I would say so.

Q In other words, approximately ten minutes before collision?

A Well, I won't say ten minutes. It might have been five minutes and one second. It was --

MR. BOWLES: We are not -- I don't think he's trying to pin you down.

Q No, no. I'm not trying to trap you or anything. The only reason I mentioned that, I'm trying to get the

chronology of what happened, and you mentioned that five minutes prior to collision you noticed that the PONCE DE LEON was making a right turn and that you got on the radio and you at this point considered her a danger to your vessel.

A Yes.

Q And then I asked you --

A Thisshadow occurred previous to this concern on my part, my awareness.

Q How much previous?

A Well, I can't say.

Q Were you keeping a plot of any of the vessels thatyou observed on the radar, a manual plot?

A No.

Q Everything was visual?

A Everything was visual.

MR. BOWLES: Referring to the radar, visual on radar?

Q Referring to the radar.

A Visual radar.

Q Any plotting or observations that you were making

were all done mentally?

A Mentally on the radar.

Q You didn't use a marking pencil or anything to track vessels on the radar?

A No.

Q Is it standard procedure to do that?

A Yes, it is.

MR. BOWLES: Is which standard procedure?

Q What is the standard procedure?

MR. BOWLES: For a vessel at anchor or for your vessel at anchor.

A At anchor, for the WILMINGTON GETTY at anchor in close quarters, radar is, as a rule, left on and visual observation is almost constant, you know, constantly.

Q Mr. Farago, I wonder if you can tell me approximately how far is the distance from the bridge wing into the wheelhouse itself? What is the approximate distance?

MR. BOWLES: What part?

Q Let's say to the door of the wheelhouse.

A From the extreme --

Q The extreme end of the bridge wing to the wheel-

house door?

A Oh, maybe 20 feet, 22 feet.

Q Now, this Channel 13 that you said you were monitoring, can you hear that from out on the bridge wing?

A I was never on the bridge wing, out to the extreme end of the bridge wing.

Q Where were you when you observed the shadow of a vessel passing by?

A In the wheelhouse door.

Q You were not out on the bridge wing, then?

A I was in the wheelhouse door.

Q That's right in the door itself and not out on the wing?

A Well, it's half in, half out.

Q Can you hear at all times Channel 13 from that position?

A Yes.

Q Do you recall hearing any communication with regard to a vessel requesting the course and intention of another vessel off Norton's Point? This is just prior to collision, we'll say within 10 or 15 minutes.

A No.

Q Do you recall how long you were observing the radar when you noticed that the PONCE DE LEON began to turn right?

MR. BOWLES: Do you mean immediately prior to that time?

Q Immediately prior; how long you were constantly watching the radar?

A In a situationof this type, you're almost on constant watch between radar, radio telephone and visual. It's constant.

Q Well, you did mention that you looked out the wheelhouse door and observed a vessel passing by.

A Yes.

Q So you could not have been constantly looking at the radar.

A Yes. Well, maybe it took me three seconds to walk to the door and maybe I watched the shadow for 10 or 15 seconds. I went back in and went back. It's a constant thing.

Q In other words, you are not one hundred per cent

watching that radar scope?

A No.

Q Mr. Farago, can I ask you, do you have any procedures with regard to emergencies on the WILMINGTON GETTY, specifically in regard to the engine room, getting up power, we'll say?

A Procedures for getting up power?

Q Yes.

MR. BOWLES: Are you relating this to the situation at anchor on this occasion or other occasions?

MR. BARRA: Just generally.

MR. BOWLES: Well, I think you're being awfully broad and vague on that because there are many, many situations where you're going to be anchored for two days or just anchored for a few hours waiting for the fog to lift or other situations.

Q Mr. Farago, are there any emergency procedures that are to be followed on board the WILMINGTON GETTY?

A No, there aren't any emergency -- I mean like if you wanted power right now, there would be -- if you're finished with engines, it takes so much time to

get power. I mean it isn't instantaneously.

Q How much time does it take?

MR. BOWLES: You have to take circumstances, Mr. Barra. State some conditions and perhaps a meaningful answer can be given. If you want to know on this occasion how long it would take to get up power, why don't you ask that question? But your question is too broad and vague to be answered as it is. What conditions are you talking about?

Q Mr. Farago, on this occasion, with the vessel at anchor in fog under the situation that you were in at this particular time, how long would it take for the engine room to get up power?

MR. BOWLES: If you know.

A Well, I think you would have to ask the engineers.

Q In other words, you as the deck officer don't know?

A No, because I don't understand the engine room procedures for getting up power. I mean they may be doing something that I'm completely -- no.

Q Let me ask you this, generally if the WILMINGTON

Finished With Engines

Jack DRMP-6.

GETTY were on ~~standby~~ engines, can you tell me how much time it would take in an emergency situation for the engine room to get up power?

A We've gone from finished with engines to first bell in 15 minutes.

Q And what about from standby engines?

A Standby engines is instantaneous. I mean standby engines are power now.

Q In other words, if you were on standby engines, the engine room has power on?

MR. BOWLES: I don't understand that.

MR. BARRA: Well, he said instantaneous.

MR. BOWLES: What do you mean by power on?

Q If you had standby engines and the engine room answers back, standby engines, does that mean that the engine room is ready to receive bells to move the vessel?

A That's correct.

Q And how long a period of time would it take, for example, if you were on standby engines, that the engineroom is ready to answer bells and you rang up emergency full stern, under normal situations, routine operating

procedures, how long would it take for the engine room to answer that bell?

A If the engines were on standby?

Q Standby, that's right.

A They would give you emergency full astern.

Q Mr. Farago, can you tell me, what are the speeds of the WILMINGTON GETTY, for example, full ahead, an approximation?

MR. BOWLES: Normal sea speed?

Q Normal sea speed.

A 13 knots.

Q What is half ahead?

MR. BOWLES: Now, you're referring to maneuvering speeds, is that correct?

MR. BARRA: I'm referring to sea speeds. If you have sea speeds half ahead, what is the normal?

MR. BOWLES: Why don't you ask if they have that first. As you know, they don't normally have such things.

Q You normally have just full ahead sea speed, 13 knots. That's the normal speed that you would cruise

at in the open waters?

A Yes, that's normal cruising speed.

Q And then in a situation such as coming into New York Harbor, you would go on maneuvering speeds?

A That's correct.

Q And just to the best of your approximation, what would be slow ahead maneuvering speed; let's say dead slow?

MR. BOWLES: If you recall.

Q You can give a range. It's just an approximation.

A Dead slow?

Q Dead slow.

A One and a half knots.

Q And what's slow?

A Slow, a little over three knots.

Q And half ahead?

A Five and a half.

Q And full ahead?

A Maybe eleven knots.

Q That's good enough.

A This is just, you know, this is --

Q Strictly an approximation --

A On --

Q -- on your part.

A See, this question is out of the range of my -- because this is a master's responsibility, you know, the speeds.

Q The maneuvering speeds, you mean?

A Yes.

MR. BOWLES: I might also comment it's not relevant at all to this situation where they are at anchor.

Q Mr. Farago, which anchor did you have out at this particular time?

MR. BOWLES: You don't have to guess. That should be shown in the log book, Mr. Farago.

Q Yes, excuse me, Mr. Farago, if you want to refer --

A Because it's been some time ago, I can't --

Q Yes. As Mr. Bowles said, if you have any question that you want to refer to any of these documents that we have marked, please feel free to do that at any time.

A Port anchor.

Q The port anchor?

A Port anchor.

Q Mr. Farago, in an emergency situation, we'll take at anchor in the situation you were in on May 10th, 1973, how long would it take for the man at the bow to let the anchor chain run and let out, for example, two or three additional shots of chain?

A Well, as long as it took him to release the brake.

MR. BOWLES: Is it only on the brake, or I think you better describe what he has to do to let out the anchor at that time. I think you should describe what he has to do to let the brake, let the anchor go.

THE WITNESS: As a rule, after anchoring the anchor pawl is put down and the brake is secured.

Q Well, how long would it take a man, for example, in an emergency situation if the order were given to release the brake and let the anchor chain run free, how long would that take to let out approximately say two or three shots of chain?

A Oh, not too long. I'd say it could be done in two minutes.

Q Mr. Farago, you mentioned that once you observed the GETTY -- excuse me, strike that, the PONCE DE LEON making a right turn, you contacted her and said you were at anchor and you continued to observe her constantly until the point of collision on your radar, is that correct?

A That's correct.

Q And you ascertained from what you observed on the radar that she was going to pass clear of you and that there would be no collision?

A (Nodding head indicating yes.)

Q Now, this proved to be an error, didn't it? It was a collision, she did not pass clear?

A It was an error on his part.

Q Mr. Farago, let's assume that in your evaluation of the situation thatyou saw a collision and that the PONCE DE LEON, in evaluating the radar, was coming at you on a collision course, what would you have done?

A I had already done all I could possibly do.

MR. BOWLES: Well, he's asking you for a

hypothetical situation, Mr. Farago. We understand that you did determine that, looking at the radar, that he was going to pass clear and that you had warned the PONCE DE LEON thatyou were anchored. Now, Mr. Barra is asking a further question. Let's say instead of seeing that he was going to pass clear, you saw that he was going to come in and collide with your ship; would you have done anything else? In other words, if it was a different situation?

THE WITNESS: Yes. In a limited time, there was nothing that I could possibly have done, nothing.

Q Thisis from at 1308, when you said you observed that the PONCE DE LEON was in a --

A When I sighted the PONCE DE LEON.

Q On radar or visually?

A Visually.

MR. BOWLES: Visually on radar?

THE WITNESS: No.

MR. BOWLES: What time was 1308?

THE WITNESS: That's when I ascertained that this vessel was the PONCE DE LEON.

Q When she turned right on radar?

A That's right.

Q And you considered her at that point to be --

A A menace.

Q A menace to you. If we can pose the hypothetical that at this point you observed she was coming right at you on a collision course, this is at 1308 we are talking about, what could you have done, if anything, to avoid that collision?

MR. BOWLES: Let me state an objection. First, at 1308 instantly you couldn't tell that she was going to come on any particular course. It takes a, as you well know, it takes time to evaluate looking at the movement of a contact on radar.

MR. BARRA: Mr. Bowles, first you can object to the question or anything else, but I would like to ask the question and have the witness answer, then you can, on redirect, ask any questions you like.

MR. BOWLES: You are required to state meaningful questions also that go somewhere.

Q I am. Mr. Farago, if at 1308, when you just said that you considered the PONCE DE LEON to be a menace

to you, if she were coming straight at you on a collision course, what could you have done in that space of five minutes to have avoided a collision?

A She wasn't coming straight at me.

Q I realize that. I'm asking you if you had evaluated the situation at that time and considered that the -- you considered her a menace already, but if you had considered that the PONCE DE LEON was coming directly at you and it was going to strike you, what could you have done from 1308 to 1313, the point of collision, to avoid that collision?

MR. BOWLES: Do you understand the question?

THE WITNESS: Yes, I understand. He's if'ing.

MR. BOWLES: That's correct. You don't have to speculate on this.

THE WITNESS: I could have immediately let the chain run.

Q What would this have done?

A The flood tide would have pushed us astern.

Q And this would have taken about two minutes?

A I would say, but --

Q It is a hypothetical question, Mr. Farago.

A The question --

MR. BOWLES: Excuse me, it depends also on what the PONCE DE LEON does, Mr. Barra.

THE WITNESS: He had stated his intention.

Q Mr. Farago, can you tell me approximately how many times -- do you want to take a break?

A No, no, that's all right.

Q Can you tell me approximately how many times you have come in and out of New York harbor on board vessels?

A With a license or --

Q Any time. We'll start with that.

MR. BOWLES: A rough estimate.

A I couldn't even begin to give you an estimate on that.

MR. BOWLES: Is it few ormany times?

Q Fifty, a hundred, two hundred?

A I'd say numerable times.

Q And how long have you been sailing as an officer, for example, on tankers?

A I'd have to check my discharge, but I'd say

total sea time on tankers as an officer would be between a year and a half and two years.

Q Did you ever, when you were on board any vessel in any capacity, ever anchor in this particular place before?

A I seem to recall anchoring there before, but I'm not positive of this, no.

Q Did you ever see many vessels anchored in this particular place?

A I've seen vessels anchored there, yes.

Q Is it a usual place where vessels anchor?

A The usual anchorage is up at Stapleton.

Q Mr. Farago, do you have any standard instructions with regard to security calls on board the WILMINGTON GETTY?

A Security calls?

Q Yes. Do you know what a security call is?

A Yes.

Q Could you describe it, what your understanding of a security call is?

A Well, a security call is a vessel that's approaching, a hazardous turn or a point of danger and he

has a dangerous cargo. He sends out a call that he's such and such a vessel approaching such and such a point loaded with so and so.

Q And what is the reason for this?

A To alert any vessel that's in the vicinity that he's in the vicinity.

Q Is this because of the dangerous potential of the type of cargo he's carrying? Does that have something to do with it?

A Yes, that's part of it.

Q Did you ever hear security calls from vessels that were at anchor?

A No, I never have.

Q What type of cargo were you carrying on this particular voyage?

A Gasoline.

Q Did you ever hear any security calls from barges or anything specifically like oil barges and so on?

MR. BOWLES: You mean at anchor?

Q Security calls from barges at anchor.

A I can't recall.

Q Is it a fair assessment to say that security calls are to alert anyone in the vicinity of a vessel that has a potentially dangerous cargo?

A Would you repeat that?

Q Is it a fair statement to say that a security call is a notice to other vessels in the vicinity that a vessel has a potentially dangerous cargo?

MR. BOWLES: I think you better state some additional conditions on that to make some sense out of it.

MR. BARRA: Let's strike that.

Q Mr. Farago, did the captain or anyone else issue any instructions as far as giving any type of security call on board the GETTY?

A No. I never encountered the captain that day. I relieved the watch, and I relieved the third mate and he's the only individual I had contact with up until the collision.

Q Were you at all concerned when you sighted this vessel visually at some time prior to the collision? Were you at all concerned that a vessel passed approximately 200 yards from you, that you might be in somewhat of a

dangerous situation?

MR. BOWLES: Wait a minute, excuse me, what vessel are we talking about that he sighted now?

MR. BARRA: We're talking about the vessel that he visually sighted.

MR. BOWLES: The shadow of a vessel he sighted?

MR. BARRA: The shadow of a vessel.

MR. BOWLES: Sometime before he first learned of the PONCE DE LEON?

MR. BARRA: That's right.

MR. BOWLES: Okay. Do you understand the question?

THE WITNESS: Yes, I do. I've already stated that I had been monitoring all traffic on the cursor and as long as they stayed to the right of my line, they were in the clear.

Q I understand that, but my question is when you sighted this shadow of a vessel visually, not on the radar, but visually and you stated that the visibility was approximately 200 yards, my question is, did you have any concern at thatpoint that you might possibly be in a dangerous

situation?

MR. BOWLES: With respect to that vessel passing?

Q With respect to your position.

MR. BOWLES: We are talking about --

A No.

MR. BOWLES: Not dangerous yourself, but with respect to that vessel passing?

MR. BARRA: If we can let the witness --

MR. BOWLES: I think you have to state a question that can be answered.

MR. BARRA: I'm asking if he was concerned with the safety of his vessel.

MR. BOWLES: With respect to the vessel that was passing?

MR. BARRA: Just with respect to his position.

MR. BOWLES: That makes no sense.

MR. BARRA: It makes sense to me.

MR. BOWLES: You have to relate it to something else, another vessel, I think.

Q Mr. Farago, were you concerned with respect to that vessel that passed approximately 200 yards away?

A I was concerned with all vessels that were passing at that time, and when I saw the shadow of that vessel, fog is a very elusive thing. It can be more or less. When I saw the shadow, I assumed that the fog was thinning, letting up.

Q Did you have any instructions from the captain with regard to calling him if vessels came within any distance of your vessel?

A No.

Q Is there a standard instruction in that regard?

A No.

Q Suppose that you did -- and this is another hypothetical -- that you did consider after the vessel swung that she was now in a dangerous position, what action would you take?

A I've already stated what action I took.

Q No, this is a hypothetical. If, after the vessel swung, you considered that she was now in a dangerous position --

MR. BOWLES: What kind of a dangerous position?

Q A hazard to navigation or hazard to your own

vessel from passing vessels, what action would you take?

A I would have called the Master.

Q That's your standard instruction, then?

A Yes. Any time a watch officer is in doubt, this is standard operating procedure. Any time a watch officer is in doubt, he immediately calls the master.

Q That would be the Master's decision as to what action should be taken, if any?

A If he arrived in time, yes, but if it were imminent, I mean like the watch officer would take whatever action he deemed necessary to avoid immediate danger, immediate danger.

Q Mr. Farago, the statement that was marked as Plaintiff's Exhibit 16 for identification, is this the only statement, written statement that you gave?

A This is my statement, yes.

Q Did you give any other statements to any company officials or anyone else other than the Coast Guard?

MR. BOWLES: Written statements, Mr. Farago.

Q Written statements.

A No.

Q This is the only one. Mr. Farago, did you write up the statement yourself?

A Yes, that's my statement.

Q No. My question is, did you write this statement yourself and then have it typed by, I believe you said the radio operator?

A Yes, radio operator.

Q Did you write it yourself?

A Yes, I did.

Q No portion of this was written then by the captain or anyone else?

A No.

Q These are your words, is what I'm driving at?

A These are my words.

Q Mr. Farago, you have no knowledge of what went on on the vessel prior to your coming up on the bridge at 11:50, is that correct, in the morning? I mean you were notup on the bridge prior to that time, were you?

A No.

Q So you weren't on the bridge when the GETTY came in to anchor or anchored and so on?

A No.

Q You were down in your cabin, I assume?

A Yes.

Q Mr. Farago, the bell book, the bridge bell book which has been marked Plaintiff's Exhibit 13 for identification, there's a 1314 as an entry, SBE. What does that stand for?

A S what?

Q SBE.

A SBE?

Q Is that standby engines?

A Where?

Q 1314.

A Standby engines, yes.

Q Is this at the time of collision?

A That isn't even the same.

Q I'm sorry, is this --

MR. BOWLES: What are you pointing to?

Q I believe that this is the May 10th arrival in New York.

A Yes, May 10th.

Q This is the time period that we have been referring to, right?

A Yes.

Q One entry is 0900, finished with engines, awaiting favorable tide.

A Yes.

Q This, I assume, is when the vessel anchored in the morning?

A Yes.

Q The next entry is 1314, standby engines.

A Yes.

Q Now, at 1314 was approximately the time of collision, I believe you testified to.

A 1313.

Q All right, 1313. Can you tell me what was the reason for putting the vessel on standby engines? Did you put the vessel on standby engines?

A Yes.

Q Was there any reason for that?

A Yes, to immediately alert all available emergency equipment for whatever happened.

Q Whatever action that might have to be taken?

A Yes.

Q And this is alerting the engine room, I take it?

A Yes.

Q Mr. Farago, I would like to refer to the deck log book which has been marked Plaintiff's Exhibit 12. On May 10th, I would just like to draw your attention to the -- there's a red entry which says 1313, vessel struck by SS PONCE DE LEON, then after that is 1255, turn to flood tide. Was the 1313 entry made prior to the 1255 entry, if you recall?

A As a rule, logbook entries are made at the end of a watch. Now, the rotation of this is --

Q Is that the routine you follow, that you make your entries in the logbook at the end of the watch?

A I -- well, you can check back.

Q No, I would just like to know if that is your routine.

A To make all logbook entries at the end of a watch.

Q How do you know exactly then what time specific entries are put in?

A I keep notes.

Q Did you keep notes on this particular occasion?

A Yes.

Q Do you have them or were they retained?

A No.

Q Did you personally destroy them or were they given to someone else?

A They were used on scratch paper. You have scratch paper on the bridge that you make notes on.

Q I take it after you made the entries you just threw them away?

A Probably. The men come up and clean up and throw them in the wastebasket.

Q You don't recall specifically doing anything with your notes on this particular occasion?

A No.

MR. BARRA: Thank you, Mr. Farago. I don't have any other questions.

EXAMINATION BY MR. BOWLES:

Q I just have a couple other questions and then we can finish this. Would you describe the cursor that you have on your radar? What does it look like physically?

A Physically?

Q Do you want to make a diagram?

A Yes. This is the center, the heading of the ship. It's relative. You have the cursors run this way and this is always the bow of the ship, the relativeheading, the center.

Q Well, for description purposes, your cursor contains one line going through the center of the radar scope?

A Yes.

Q And several parallel lines on each side of the center?

A That's correct.

Q And how many lines to the side of the center line do you have?

A You have the center line on, then five on each side.

Q And when you rotate the cursor, all of these

lines move together, is that correct?

A All of these lines move, yes. This always heads for the -- the center one is -- if you move the center line, they all move parallel.

MR. BOWLES: Let's mark this the next exhibit, Plaintiff's Exhibit 19 for identification.

(The diagram referred to above was then marked Plaintiff's Exhibit 19 for identification.)

Q Just two more questions, if we can. You described seeing a shadow of a vessel pass by sometime before sighting the PONCE DE LEON on your radar.

A Yes.

Q Do you have any estimate of the distance that vessel passed away, whether it was 200 yards or more than 200 yards or less than 200 yards?

A I couldn't estimate really the distance, because it was fog and it was varying, but when I saw the PONCE DE LEON, I could see the bow of the WILMINGTON GETTY and I estimated the PONCE DE LEON, once again, the distance from the Wilmington Getty's bridge to the Ponce de Leon's bow, 200 yards, 600 feet. KCK DRMP AG

Q In other words, she was about 300 feet away from your bow?

A Yes.

Q And you described that as seconds before collision?

A Yes, very, very short time.

Q And you said that the time to let go of your anchor would be up to two minutes, is thatcorrect?

A To get everything, yes, I would say it would take two minutes, two men at least, to lift the pawl and start the chain, just to take the brake off before any movement at all of the vessel. It would take at least two minutes.

Q When you first sighted the PONCE DE LEON visually, was there time to let the anchor go to move your ship out of the way?

A No way.

MR. BOWLES: No further questions.

EXAMINATION BY MR. BARRA:

Q I have two short questions, Mr. Farago. You're wearing glasses now. How long have you been wearing glasses?

A Seven years.

Q Were you wearing glasses -- didyou have your glasses with you on the bridge that day?

A Oh, yes.

MR. BARRA: That's all I have.

MR. BOWLES: Do you need the glasses for reading or distance?

THE WITNESS: Reading.

MR. BOWLES: No further questions. Thank you very much.

MR. BARRA: Thank you, Mr. Farago.

(Examination concluded.)

- - - - -

STATE OF MARYLAND

CITY OF BALTIMORE, SS

I, Donald F. Coolahan, a Notary Public, in and for the State of Maryland, County of Anne Arundel, do hereby certify that the within named, GEORGE FARAGO, personally appeared before me at the time and place herein set out and after having been duly sworn by me according to law,

was interrogated by counsel.

I further certify that the examination was recorded stenographically by me and then transcribed from my stenographic notes to the within typewritten matter in a true and accurate manner.

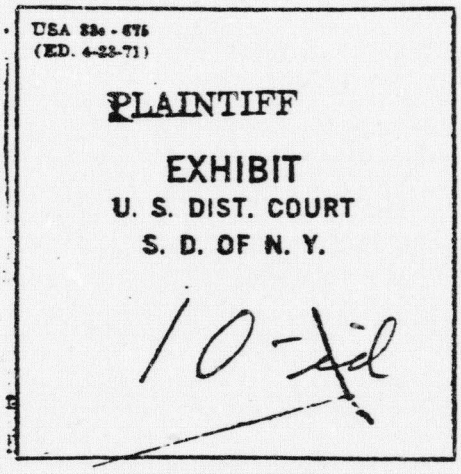
I further certify that the stipulations contained herein were entered into by counsel in my presence.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As Witness, my hand and Notarial Seal this 3rd day of September, 1974, at Baltimore, Maryland.

D Hoodahan

NOTARY PUBLIC


USA 33a - 675
(ED. 4-23-71)
PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
10-Jd

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GETTY OIL COMPANY
(EASTERN OPERATIONS), INC.,

Plaintiff,

vs. 79790 73 Civil 3480

S. S. PONCE DE LEON, her engines, tackle, etc., SUN LEASING CO. and TRANSAMERICAN TRAILER TRANSPORT, INC.,

Defendants.

----------x

DEPOSITION of Capt. JENS G. BRIXEN, held on board the NEW YORK GETTY, Hudson Avenue Pier, Brooklyn, New York, on the 10th day of October, 1974, commencing at 2:30 p.m., pursuant to Notice and Agreement, before Robert Zerkin, Commissioner of Deeds of the City of New York.

BENJAMIN REPORTING SERVICE
5 BEEKMAN STREET
NEW YORK. N.Y. 10038
374-1138

A P P E A R A N C E S :

KIRLIN, CAMPBELL & KEATING, ESQS.
Attorneys for Plaintiff
120 Broadway
New York, New York 10005
BY: LAWRENCE J. BOWLES, ESQ.,
of Counsel

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, ESQS.
Attorneys for Defendants
576 Fifth Avenue
New York, New York 10036
BY: VINCENT J. BARRA, ESQ.,
of Counsel

oOo

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within examination may be subscribed and sworn to before any Notary Public with the same force and effect as though subscribed and sworn to before this Court.

CAPT. JENS G. BRIXEN, having been first duly sworn by Robert Zerkin, Commissioner of Deeds, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BOWLES:

Q Please state your full name and present residence for the record.

A Jens G. Brixen, 9 Herbert Drive, Newcastle, Delaware.

Q Were you the captain of the WILMINGTON GETTY on May 10, 1973?

A I was.

Q What is your age, sir?

A 54.

Q Do you hold any licenses issued by the U. S. Coast Guard?

A I do.

Q What license do you hold?

A Unlimited master's.

Q How long have you had a master's license, approximately?

A Approximately since 1955.

Q How long have you been going to sea?

A Since 1937.

Q When did you obtain your first license in any capacity?

A 1941.

Q When did you first commence sailing as a master of ships?

A 1960.

Q Do you hold any pilotage endorsements for New York Harbor?

A I do.

Q What areas?

A Upper and lower bay.

Q How long have you been employed by Getty Oil Company?

A 24 years.

Q How long had you been on the WILMINGTON GETTY in May 1973?

A Approximately eight years.

Q Prior to May 1973, had you acted as pilot of ships entering New York Harbor?

A Yes.

Q On approximately how many occasions, can you say?

A On the order of 50 to 100 times.

Q How long is the WILMINGTON GETTY?

A 585 feet.

Q What is her breadth?

A 74 feet.

Q On May 10, 1973, what were her draughts?

A Forward draught 31 feet 9 inches and aft draught was 31 feet 11 inches.

Q What cargo did you have on the WILMINGTON GETTY?

A Gasoline and No. 2 heating oil.

Q Captain, in front of you are a number of documents, some of which have been marked for identification on a prior deposition of Mr. Farago, third mate and watch officer of the WILMINGTON GETTY, referring to the deck log book, marked Plaintiff's Exhibit 12 for identification, the bridge bell book, marked Plaintiff's Exhibit 13 for identification, the engine bell book, marked Plaintiff's Exhibit 14 for identification, and chart No. C&GS540, marked Plaintiff's Exhibit 15 for identification.

Captain, with respect to the collision on May 10, 1973 with the PONCE DE LEON, did you prepare a report for the United States Coast Guard?

A I did.

Q Is this a copy of that report?

A It is.

MR. BOWLES: Would you mark this Plaintiff's Exhibit 20 for identification.

(Above-described document herein marked Plaintiff's Exhibit 20 for identification, this date.)

Q Did you prepare any other written reports concerning the accident?

A Yes, I did.

Q Is this a copy of that report?

A This is that report.

MR. BOWLES: Please mark that Plaintiff's Exhibit 21 for identification.

(Above-mentioned typewritten report of Capt. Jens G. Brixen herein marked Plaintiff's Exhibit 21 for identification, this date.)

Q Captain, I show you four photographs, and will you tell us what they portray.

A They portray the damage done to the WILMINGTON GETTY being hit by the PONCE DE LEON.

MR. BOWLES: Please mark these photographs Plaintiff's Exhibit 22-A, B, C and D.

(Above-described photographs herein marked

Plaintiff's Exhibits 22-A through 22-D for identification, this date.)

Q Captain, what is this document?

A This is a "Local Notice to Mariners" issued by the United States Coast Guard in New York.

Q What is the date on that?

A March 7, 1973.

Q That is the Notice to Mariners No. 10?

A Number 10.

MR. BOWLES: Please mark that as Plaintiff's Exhibit 23 for identification.

(Above-described document herein marked Plaintiff's Exhibit 23 for identification, this date.)

Q Captain, on May 10, 1973, was the WILMINGTON GETTY equipped with a course recording device?

A To my recollection, she had a device but it was not operative at the time.

Q Captain, in giving your testimony, you are free to refer to any of your ship's documents for any data you might require?

A Thank you.

Q When did the WILMINGTON GETTY arrive in New York Harbor on May 10, 1973?

A I refer to the document -- log book: Arrival at Ambrose was 0712.

Q What were the weather conditions at that time?

A It was foggy at the time.

Q What visibility, approximately?

A Varied visibility from approximately 200 to 1,000 feet.

Q After 0712 hours on May 10, 1973, which you noted was the arrival at Ambrose, what occured next? What did you ship do after that?

A We proceeded up Ambrose Channel with the expectation of proceeding to Anchorage 25 and awaiting towboats for later docking.

Q At what time were you expecting to dock?

A The towboats, I believe, were ordered at 1400.

Q Where was your ship scheduled to dock?

A Texaco, Bayonne, New Jersey.

Q Going back to the prior question, will you describe what occurred as you proceeded up Ambrose Channel then?

A After we proceeded to Buoy 18, it appeared on radar that the inner anchorages were extremely crowded and it was decided to proceed to Gravesend.

Q When you say "inner anchorage", what do you mean?

A Stapleton.

Q Where did you decide to anchor?

A In the vicinity of Nortons Point, Gravesend Bay.

Q Where did your vessel finally anchor?

A Off Nortons Point.

Q In what position?

A Do you have a pair of dividers?

Q Can you point to the position.

A The marked position on the chart.

Q Referring to the chart marked Plaintiff's Exhibit 15 for identification, you pointed to some position on the chart marked with a circle and X, is that correct?

A Right.

Q Above the written in figures, 1130?

A That is right.

Q What is the approximate distance off Nortons Point for that position?

A Could I have a pair of dividers?

Q (Handing.)

A .6 miles off Nortons Point.

Q Captain, who plotted these positions? I

understand there are two positions?

A That is correct.

Q Who plotted these positions.

A I plotted the first one.

Q Which one?

A Radar bearing.

Q The one marked "radar bearing"?

A That is correct.

Q That is yours?

A Yes.

Q Whose is the other bearing?

A The other bearing is by the third mate, Farago. The time is marked 1130.

Q Was Mr. Farago on watch at 1130?

A No, sir. He came on watch at 12:00.

Q Do you know who plotted the position at the time marked 1130, marked on the chart?

A Yes, I do. It was Mr. Lindsay, the third mate.

Q Would he be the mate on watch prior to Mr. Farago?

A That is right.

Q What time did your ship anchor in this vicinity that you have marked?

A 0856.

Q And after 0356, who remained on the bridge, if anyone?

A The third mate remained until approximately 12:00 noon when Mr. Farago and the other third mate took over.

Q What were the duties of the third mate and watch officer on the bridge after the vessel was anchored?

A Well, their duties were to watch for passing traffic on the radar and to see that proper fog signals were sounded.

Q Did they ever have any other duties?

Specifically, was your ship's radio in use?

A Also to monitor Channel 13.

Q Was there anyone on the bow of the ship?

A Yes. There was one man on the bow.

Q What were his duties?

A That was to ring the bell at least once every minute.

Q To your knowledge, was the bell being rung or not?

A The bell was being rung.

Q After the ship anchored, was there anyone in the engine room?

A Yes.

Q What was the status there? What was the watch status? Who was in the engine room?

A One engineer, one oiler on watch.

Q Did you give any instructions to the engine room on anchoring?

A I called down that we had anchored on account of fog and to be ready at any time whenever the fog lifts.

Q Ready for what?

A Ready for using the engine.

Q Do you have any estimate as to how long it would take to get power to the engine, to get the ~~proper~~ propeller turning, if you had occasion to do that? KCK DRH PLG

A I would estimate three to five minutes.

Q After 9:00 o'clock or after the vessel anchored, what were your activities? What did you do for the morning?

A I had some paperwork in the office.

Q Did you leave the bridge after the ship anchored?

A I left the bridge, yes.

Q Did you have any occasion to go back to the bridge after you left it?

A I was back several times.

Q For what purpose?

A To check on the weather conditions and the position of the ship.

Q Did you have occasion to verify the ship's position after you anchored about 0856?

A Yes,verified it on radar by lining up the channel buoys.

Q Was your ship maintaining position or moving?

A It was maintaining position within a few feet due to tide conditions.

Q Captain, in going to anchor, how did you choose the particular position that you had where you did anchor finally off Nortons Point?

A The main consideration was to be well clear of the channel and the second consideration was to have sufficient water.

Q In your position where you did anchor, could you have anchored much closer to Nortons point than you did?

A No, sir.

Q Why is that?

A Insufficient water.

Q What were your deepest draughts?

A 31-11.

Q Almost 32 feet?

A Yes.

Q Going shoreward from your anchorage position to Nortons Point, what happens to the --

A The shoals rise and the draught is less than 30 feet -- the depth is less than 30 feet.

Q Immediately prior to the collision, where were you located?

A In my office.

Q Describe what happened from then until the collision. What occurred?

A I heard our ship blow the danger signal and went to the bridge within a few seconds.

Q What is a danger signal?

A Four short blasts.

Q On the ship's whistle?

A Yes, on the ship's whistle.

Q When you got to the bridge, what occurred? Did you see what happened?

A I could see a vessel crossing from starboard to port in very close proximate --

Q Which ship was that?

A The PONCE DE LEON.

Q What occurred next?

A He had almost cleared this vessel when he ~~hauled~~ hit my ~~up the~~ anchor chain and a few seconds after his left KCK DRMPG side struck our bow.

Q Had you heard any whistle signals from the PONCE DE LEON at any time?

A Yes, I heard a number of signals from her.

Q Did you know whether they were from the PONCE DE LEON?

A When I see the vessel, I assumed they were from the vessel in question.

Q Did you form any estimate of the speed of the PONCE DE LEON prior to collision as she was approaching you?

A I did.

Q What is your estimate?

A About eight knots.

Q Could you draw a diagram for us showing the position of the two vessels at the time of impact. I am going to draw the outline of one vessel or ship, which I will label "WG" for WILMINGTON GETTY, and ask you to make the diagram of another ship to show the PONCE DE LEON at the time of contact with the WILMINGTON GETTY.

A At the time of contact with the WILMINGTON GETTY?

Q Yes, at the time of contact. Show the direction she was heading at the moment of contact, approximately.

A (Complying.)

Q Label that "PDL".

A (Complying.)

MR. BOWLES: Please mark that Plaintiff's Exhibit 24 for identification.

(Above-described diagram herein marked Plaintiff's Exhibit 24 for identification, this date.)

Q Captain, in what compass direction, if you know, was the WILMINGTON GETTY heading at about the time of collision?

A She was heading approximately 168.

Q How did you determine that?

A I watched the compass several times.

Q Did you see the compass at the time of collision or shortly thereafter?

A Shortly thereafter.

Q Did you have occasion to determine the direction and velocity of the current at about the time

of collision or shortly thereafter?

A By looking over the side and consulting time-tables.

Q Tide tables?

A Tide-current tables, excuse me.

Q What is your estimate of the current at the time of collision?

A Approximately half a knot.

Q What direction was the current proceeding; flood or ebb?

A It was flooding at the time.

Q Captain, do you have any opinion as to the cause of this collision?

A Yes, I do.

Q What is your opinion, sir?

A I would say it was caused by the other vessel in pulling out of the channel and cutting close to this vessel.

Q You mean to the WILMINGTON GETTY?

A Yes, to the WILMINGTON GETTY and approximately going at excessive speed.

MR. BOWLES: I have no further questions at this time.

CROSS EXAMINATION

BY MR. BARRA:

Q Was there a pilot on board the WILMINGTON GETTY on May 10, 1973 when you came up Ambrose Channel?

A I was a licensed pilot.

Q So then you were both in command and the pilot on board?

A That is right.

Q Captain, when you arrived at Ambrose Light Tower, had you decided at that time that you would anchor your vessel when you got into the harbor?

A Into the harbor, yes; that is Stapleton was our normal anchorage.

Q When did you determine that the normal anchorage was too congested for you to anchor?

A Shortly after clearing Buoy 18.

Q Was there any way you could determine prior to that whether the anchorage was congested or not?

A In my estimation, no.

Q Do you have any communications when you approach Ambrose with your office or dispatcher or anything of that nature?

A No, we do not.

Q Do you have any communications with the pilot boat or any of the other vessels outbound?

A We have Channel 13.

Q Did you converse with any outbound vessels or with the pilot boat upon arrival at Ambrose?

A I do not recollect any conversations.

Q Would you consider it customary and routine for you to check with vessels that are outbound and/or the pilot boat as to the congestion of the anchorages? Do you routinely do this?

A No, I do not.

Q Captain, I notice from your statement, which has been marked as Plaintiff's Exhibit 21 for identification, and this is your statement, is that correct?

A That is right.

Q To whom was this statement made and for what purpose was it written? Was it written to the Coast Guard, to the company?

A Who is it addressed to?

Q It is not addressed to anyone. That is the reason for my question.

A I do not recall who, in particular, it was addressed to, at this time.

MR. BOWLES: My understanding is that probably the company asked him to do that.

That was prepared before my office was retained in the matter, so I assume the company requested him to prepare that.

A We file a copy for the company.

Q Do you routinely file accident reports with the company?

A We do.

Q Is this the only report you filed of this collision?

A That?

Q Is that the only one?

A No, that is the only one, except the Coast Guard report.

Q The Coast Guard report, marked as Exhibit 20?

A Yes.

Q You made no other written reports?

A No other written reports.

Q I notice in this report, and you can refer to it any time you want to, midway in the first page, and I will quote: "Immediately after anchoring, a security call was put on UHF Channel 13 that this vessel had anchored approximately .6 miles off Nortons Point."

Please explain what the security call is.

A It is a general call identifying the name of the vessel and position and status of the vessel at the time.

Q Does it also include the type of cargo she has on board?

A Not generally.

Q Did you in this case, because of the nature of the cargo?

A No, we did not.

Q Can you tell me why you issue a security call?

A Just as a general precaution to warn other vessels.

Q Do you do this each time that your vessel anchors or does it depend on the position?

A It depends on the circumstances or the position.

Q So in this case you deemed it advisable and prudent to issue a security call?

A That is right.

Q Is this because of the position you were anchored in?

A No, mainly on account of the fog.

Q Did you issue any other security calls

other than this initial one immediately after anchoring?

A No, we did not.

Q Don't you think it would be prudent to issue periodic security calls as to your position and intentions?

A No, I do not.

Q Does the company have any standard instructions on board the WILMINGTON GETTY as to anchoring procedures?

A There are no company instructions.

Q There are none?

A There are none.

Q Do you issue any instructions with regard to anchoring procedures or instructions to the watch?

A Yes, you do when you leave the bridge.

Q Did you on this occasion?

A I did.

Q Do you have those instructions with you?

A They are not written instructions.

Q They are not written instructions?

A They are oral instructions only.

Q Did you issue any oral instructions on May 10th, right after anchoring?

A I did.

Q What were they?

A They were to keep a check on the vessel's position by radar and also listen in on calls on Channel 13.

Q You did not instruct the watch to make periodic security calls as to your position?

A I did not.

Q Mr. Farago, the third mate, indicated that there was, he said, what was similar to a night order book with instructions.

A That is correct, a night order book, but that does not apply in the daytime.

Q He said it was something similar to a night order book with instructions he was to follow while at anchor.

A The night order book includes certain instructions to be followed during anchoring but there again it was a night order book and not a general instruction book.

Q Captain, you mention that the vessel was on finish with the engine after she anchored.

A That is the normal --

Q Do you ever put the engines on standby engine when anchored in fog?

A Yes, if you are what you consider in a dangerous position.

Q Did you consider this to be a dangerous position?

A I did not.

Q Did you leave any instructions with the watch with regard to vessels passing close by the WILMINGTON GETTY?

A I did not.

Q This Notice to Mariners that was marked as Plaintiff's Exhibit 23, can you tell me where this particular document comes from, if you know?

A It was either handed to us or mailed from our office.

Q Where did you obtain this document? Did you take this from the bridge of the vessel or was this given to you?

A Given by our marine manager.

Q When was that?

A Some days after the collision.

Q What I am driving at, Captain, this particular piece of paper; was this on the bridge of the WILMINGTON GETTY --

A To my knowledge, no.

Q -- on May 10?

A No.

Q This was given to you sometime subsequent?

A That is right.

Q Captain, have you ever anchored in this particular position before, so close to the channel --

A Yes.

Q -- off Nortons Point?

A In approximately the same vicinity.

Q As close to the channel as that?

A As close.

Q Captain, were you aware that the tide would be changing at approximately 1130, from ebb to flood?

A Yes.

Q Did you leave any instructions with regard to this to the watch?

A No.

Q Were you up on the bridge any time after 11:30?

MR. BOWLES: Until what time?

Q Until the time of the collision?

A Yes, I estimate several times.

Q Several times?

A Yes.

Q Was the vessel ~~swaying~~ swinging in the tide at this point?

A I do not recall the exact time it was ~~swaying~~ swinging in the tide. It is in the log book.

Q There is an entry in the log book, 1145, vessel started to swing to flood tide.

A That is correct.

Q Were you on the bridge subsequent to that until the time of the collision w en you testified you came up on the bridge?

A Yes, several times.

Q Captain, what would be the range of the WILMINGTON GETTY with three ~~chocks~~ shots in the water, that they would swing from the tide; from what position to what position; what would be the distance? Do you understand my question?

A I believe I do. Well, we had three ~~chocks~~ shots out; each ~~chock~~ shot is 90 feet, making 270 feet and we swing -- the chain is going to be laying on the bottom and it comes around the next heading; probably in the order of 400-500 feet difference.

Q Would that be increased by the length of your vessel?

MR. BOWLES: If you are referring from the point of the anchor to the stern of the ship.

A That is, of course, if you have the whole length, it is going to remain the same.

Q In other words, from the stern; at the position from the stern of the WILMINGTON GETTY to when she swung around to where the stern would be.

A You would have to include the length of the vessel -- yes, you would have to include the length of the vessel.

Q Weren't you concerned at all that with the ~~swaying~~ swinging of the tide and the distance of the range of the swing, that they would be a lot closer to the channel than originally anchored?

A I was aware she would be somewhat closer.

MR. BOWLES: During the swing or after she fetches up her turn?

A (Continuing) As to be well out of the channel.

MR. BARRA: After she completes the turn.

Q But it is going to be closer to the channel after the swing?

A Not necessarily.

Q I thought that is what you said.

A No.

Q But this did not concern you at all?

A In fog you are always concerned.

Q I realize that.

I am talking about the fact that your vessel was now ~~swaying~~ swinging with the tide and could possibly be much closer, as much as 1,000 or 1500 feet.

A With the width of Ambrose Channel, I see no reason to be concerned as long as you are outside the channel.

Q In other words, if you are 100 feet outside the channel, that is no problem?

MR. BOWLES: Just a moment.

A I don't think so, in Ambrose.

MR. BOWLES: I am going to object to the question. It makes no sense at all.

The ship, when it is lying to one current is going to be parallel to the channel a certain distance off the channel.

MR. BARRA: We are not taking your deposition.

MR. BOWLES: When she swings in the opposite direction, it is still parallel to the channel. How are you saying that it is going

to be in the channel after she swings?

MR. BARRA: I am merely asking the Captain, who said, that even though she was closer as long as she was outside the channel he was not concerned and I am talking about being concerned.

MR. BOWLES: He did not say it would be closer after she swung. That is the point that you are trying to put in there which is not the testimony.

BY MR. BARRA:

Q Would you consider it a dangerous situation if vessels passed within 200 yards of your vessel at anchor in this position?

A No, I wouldn't consider that dangerous provided the vessel is properly under command.

Q Captain, had you received orders that you were to dock? Were the tugs ordered for that time?

A Tugs were ordered for 1400.

Q I am sorry. I thought your statement said 1600.

A That may be an error.

Q Tugs were ordered?

A Tugs were ordered.

Q Captain, do you have a recording device

which records conversations on your Channel 13?

A We do not.

Q You mentioned that you were not on the bridge at the time of the collision?

A I was, at the time of the collision.

Q At the time of the collision?

A At the time of impact I was on the bridge.

Q How long were you on the bridge prior to impact?

A I would estimate half a minute to a minute.

Q When were you up on the bridge on a prior occasion to that, approximately?

A I was on the bridge several times during the period, quite frequently. I could not give you any exact times.

Q Captain, upon your arrival at Ambrose Light Tower, if you were aware that the Stapleton anchorage was congested, would it have been more prudent to anchor at Ambrose Light Tower than in the position you did on May 10?

A You never know when an anchorage is going to be crowded. One minute it is crowded and ships are going and coming all the time. You do not have any advance information, as in this case. It was foggy and I am

quite sure a lot of ships that had intended to move had not moved.

Q I wonder if you could answer my question.

A Repeat the question, please.

MR. BOWLES: Please read the question and the answer.

(Record read.)

MR. BOWLES: I think you should explain your question. What do you mean by "prudent"? Does it include what some other ship might do?

Q Captain, if you were in contact with the pilot boat and outbound vessels and you contacted them and asked them the status of the Stapleton anchorage and determined it was very congested and that there did not appear to be any anchorage positions; my question to you is, aware of this information, wouldn't it have been more prudent to anchor in the open road instead of outside of Ambrose, in the position you did on May 10?

A I considered Gravesend just as safe as outside of Ambrose.

Q The position --

A I considered that as safe as anchoring outside where you have ships going and coming and furthermore

in all directions, not just --

Q You were not in Gravesend anchorage outbound?

A That is correct.

Q You were not in the anchorage per se?

A That is correct.

MR. BARRA: That is all I have.

RE-DIRECT EXAMINATION

BY MR. BOWLES:

Q Captain, where did you anchor and how far off the channel were you?

A A little over 3,000 yards.

Q Excuse me, that is 300 yards?

A Yes, 300 yards -- 1,000 feet.

Q How far off Anchorage 25 were you?

A About 300 yards.

Q Is there any reason why you did not anchor in Anchorage area No. 25?

A Yes.

Q What is your reason?

A There were several ships up there or targets on the radar that I assumed to be ships.

Q What effect did that have on your decision not to anchor in Anchorage area No. 25?

A I decided not to crowd those vessels and get in too close to the proximate area.

Q In using the security call, is that something you give for a change of status; in other words in going from underway to anchor and anchor to underway?

A That is correct.

Q When you gave the security call on anchoring, was it your intention to advise vessels around you as to the change of status?

A That is correct.

Q While your vessel was anchored in this position before the collision by the PONCE DE LEON, while you were on the bridge, had your vessel communicated with any of the passing vessels?

A I do not believe so.

Q Did you hear yourself or did your mates on watch hear any vessels, any passing vessels, make comments or criticisms of the point where you were anchored?

A There was none.

Q If any vessel coming up or down the channel had its radar on, do you have an opinion as to whether you can tell whether it was stationary or not?

A You should tell whether it is stationary.

MR. BARRA: I object to the question.

Q How do you do that?

A Checking out the position in relationship to the land and --

Q When you say hecking with relation to the land , what do you mean?

A In this case, Nortons Point.

Q In other words, if you were moving with respect to Nortons Point, would that be visible on somebody else's radar?

A It definitely would.

Q With your vessel at anchor, Captain, if the order were given to release the anchor, can you tell us how long that would take for the vessel to move?

MR. BARRA: Objection.

Q Can you tell us, Captain.

A My estimation would be five minutes before the ship would move.

Q What has to be done to make the ship move, assuming you are not using your engines?

A First you have to take -- you have to release the pawls and then you have to walk around the windlass, taking a wrench and taking several turns on the anchor

brake and then the anchor might or might not -- excuse me, the chain might or might not start running out.

Q What would it depend on?

A It would depend on the strength of the current and the wind.

MR. BOWLES: I have no further questions.

RE-CROSS EXAMINATION

BY MR. BARRA:

Q Captain, I notice on the chart that has been marked Plaintiff's Exhibit 15, that the two positions that are marked on the chart, one is 1130 and one is 1125, I believe, is that correct?

A That is correct.

Q In other words, there are no other positions marked on this chart after the vessel began to swing with the tide?

A That is correct.

Q Captain, how many men were on the bow of the WILMINGTON GETTY at 1300 on May 10?

A Two, to my knowledge.

Q How long would it take two men to release the pawl and release the brake on the anchors?

A Two, three minutes, I would estimate.

MR. BARRA: I do not have any further ques-

tions.

RE-DIRECT EXAMINATION

BY MR. BOWLES:

Q Captain, after the collision, did you have occasion to check the ship's position on the chart?

A I did.

Q What did you find?

A It was approximately the same position.

Q Captain, when you were on the bridge after anchoring, what was the situation with respect to Channel 13? Was it heavily used or moderately used or hardly used?

A Quite heavily used.

MR. BARRA: Excuse me. What point in time is this?

MR. BOWLES: After he anchored, at any point he was on the bridge.

Q Do you have any opinion as to whether or not it would be prudent with respect to other vessels for your vessel to be making periodic security calls?

A Yes, I do have an opinion.

Q What is your opinion?

A That it would crowd the channel unnecessarily for real, essential traffic.

MR. BOWLES: I have no further questions.

(Whereupon, at 3:30 p.m., the within examination was concluded.)

_____

Capt. Jens G. Brixen

Subscribed and sworn to
before me this_____
day of_____
1974

_____

oOo

I N D E X

| Witness | Direct | Cross | Re-Direct | Re-Cross |
|---|---|---|---|---|
| Capt. Jens G. Brixen | 3 | 17 | 32<br>35 | 35 |

o0o

E X H I B I T S

| Plaintiff's For Identification | | Page |
|---|---|---|
| 20 | United States Coast Guard report by Capt. Brixen | 6 |
| 21 | Typewritten report of Capt. Brixen | 6 |
| 22-A through 22-D | Four photographs showing damage to the WILMINGTON GETTY | 6 |
| 23 | Document, "Local Notice to Mariners" | 7 |
| 24 | Diagram by Capt. Brixen | 16 |

o0o

STATE OF NEW YORK )
) ss:
COUNTY OF NEW YORK )

I, ROBERT ZERKIN, Commissioner of Deeds of the City of New York, do hereby certify that the foregoing deposition of Capt. JENS G. BRIXEN was taken before me on the 10th day of October, 1974.

The said witness was duly sworn before the commencement of his testimony; that the said testimony was taken stenographically by myself and then transcribed.

The within transcript is a true record of the said deposition.

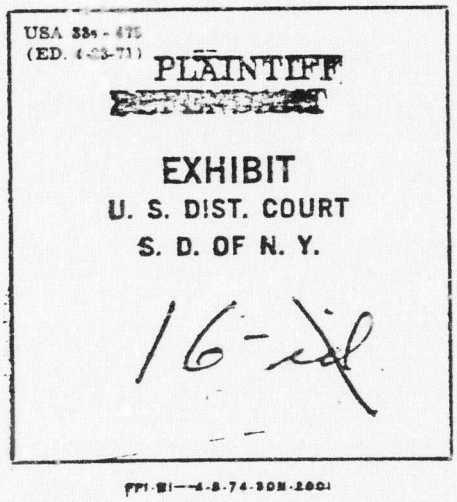
I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at the County and State of New York, this 17th day of October, 1974.

Robert Zerkin

Robert Zerkin

ROBERT ZERKIN
COMMISSIONER OF DEEDS
CITY OF NEW YORK 4-1331
Certificate filed in New York County
Commission Expires June 1, 1976


USA 33s - 47b
(ED. 4-63-71)
PLAINTIFF
DEFENDANT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
16-id
FFI-81—4-8-74-30M-2001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GETTY OIL COMPANY
(EASTERN OPERATIONS), INC., 79740

Plaintiff,

vs.

73 Civil
3480

S. S. PONCE DE LEON, her engines, tackle, etc., SUN LEASING CO. and TRANSAMERICAN TRAILER TRANSPORT, INC.,

Defendants.

----------x

DEPOSITION of ROGER J. MEADE, held at the offices of Kirlin, Campbell & Keating, Esqs., 120 Broadway, New York, New York 10005, on the 8th day of August, 1974, at 10:30 a.m., pursuant to Notice dated February 25, 1974, before Robert Zerkin, Commissioner of Deeds of the City of New York.

A P P E A R A N C E S :

KIRLIN, CAMPBELL & KEATING, ESQS.
Attorneys for Plaintiff,
120 Broadway
New York, New York 10005
BY: LAWRENCE J. BOWLES, ESQ.,
of Counsel

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, ESQS.
Attorneys for Defendants
576 Fifth Avenue
New York, New York 10036
BY: VINCENT J. BARRA, ESQ.,
of Counsel

o0o

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within examination may be subscribed and sworn to before any Notary Public with the same force and effect as though subscribed and sworn to before this Court.

o0o

R O G E R J. M E A D E, having been first duly sworn by the Commissioner of Deeds, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BOWLES:

Q Please state your full name and present residence for the record.

A My name is Roger J. Meade. My residence is 44 Hewlett Court, Babylon, New York, 11702.

Q Capt. Meade, were you the master of the PONCE DE LEON on May 10, 1973 at the time of her collision with the WILMINGTON GETTY?

A I was.

MR. BOWLES: Please mark the Notice of Deposition as Plaintiff's Exhibit 1 for identification.

(Above-described document herein marked Plaintiff's Exhibit 1 for identification, this date.)

MR. BOWLES: Mr. Barra, referring to Plaintiff's Exhibit 1, the Notice of Deposition, I asked you to produce a number of documents and you have produced most of those asked for.

You have here the page of the rough bridge log book for May 10, 1973. Will you mark this as Plaintiff's Exhibit 2 for identification.

(Above-described document herein marked

Plaintiff's Exhibit 2 for identification, this date.)

MR. BOWLES: You produced a page from the rough engine log book of the PONCE DE LEON, but it ends at noon on May 10, 1973, prior to the collision. We will mark this sheet as Plaintiff's Exhibit 3, and ask that you produce the page commencing at May 10, and which we will mark as Plaintiff's Exhibit 3-A for identification, if you have no objection.

MR. BARRA: We will produce that.

(Above-described document herein marked Plaintiff's Exhibit 3 for identification, this date;

The additional described document herein deemed marked Plaintiff's Exhibit 3-A for identification.)

MR. BOWLES: Would you mark the bridge bell book as Plaintiff's Exhibit No. 4 and the engine bell book will be marked Exhibit 5.

(Above-described documents herein marked, respectively, Plaintiff's Exhibits 4 and 5 for identification, this date.)

Q Captain, is this the PONCE DE LEON chart in use on her bridge at the time of the collision?

A Yes, it is.

MR. BOWLES: Please mark this as Plain-

tiff's Exhibit 6 for identification.

(Above-described document herein marked Plaintiff's Exhibit 6 for identification, this date.)

Q Did you have any other charts on the bridge? Did you have a CS 369 on the bridge?

A Yes. This is the general chart of New York harbor, as I recall it -- it was on the bridge.

Q Was that preserved?

MR. BOWLES: Do you have that chart also, Mr. Barra?

MR. BARRA: I do not know. I assume they are on the vessel. We did not request that chart since it was my understanding that this was the chart that was being used.

Perhaps, you would like to ask the Captain that.

Q Just immediately prior to the collision, this was the chart being used, Plaintiff's Exhibit 6?

A This was the chart in use at the time.

Q Have you made any marks on the chart, CS 369 the general entrance chart to New York Harbor?

A No, there were no marks made on that since that was a general chart and there was -- it was not neces-

sary.

Q Is this the gyro course recorder tape of the PONCE DE LEON for the date of the collision?

A It appears to be. Yes, I would say that it is.

MR. BOWLES: Please mark this as Plaintiff's Exhibit 7.

(Above-described document herein marked Plaintiff's Exhibit 7 for identification, this date.)

Q Captain, did you, in addition to the bell books and the log book, did you have any rough navigation notebook for noting navigational information on the PONCE DE LEON on the day of the collision?

A No, there would not have been anything like that. We were going strictly by the charts in hand.

Q Would you have any rough notes of any form as you are coming in as to the events as they are occurring, that is navigational events, radio communications, anything of that sort?

A I have no knowledge of any.

Q Do you make any tape recordings of radio communications?

A Tape recordings?

Q Do you make any recordings of voice commu-

nications, particularly on radio Channel 13?

A When you say "recordings" --

Q Notes or recordings of any kind?

A No written notes. We have no equipment for doing that.

Q Do you have a radio log, radio communications log for your Channel 13 use?

A This would be in the domain of the radio officer and I am not sure --

Q I am talking about Channel 13, your voice radio on the bridge.

A There are no written records kept of that.

Q Did you prepare this Coast Guard report of the accident?

A Yes, I did.

MR. BOWLES: Please mark that as the next Exhibit for identification.

(Above-described document herein marked Plaintiff's Exhibit 8 for identification, this date.)

Q Is that your signature on the second page?

A Yes.

Q And the date of that is May 10, 1973?

A Yes.

I would like to amend the previous statement on Chart 369. Perhaps, I didn't quite understand your question. You asked me whether any marks had been made on that. I think, looking back, that probably the arrival time at Ambrose, which is included on this chart, would have been made on that. I'd have to refresh myself on the chart, but very probably that entry would have been made on that.

Q Would you have marked the times of passing buoys on the chart, other buoys or lighthouses, as you passed? Would that have been put on the chart?

A That information, operating under close conditions, would have been carried only in the bell book.

Q Captain, other than the United States Coast Guard report, which we have now marked Plaintiff's Exhibit 8 for identification, have you made any other reports, company accident reports of any kind, submitted any letter or report of any kind to your company concerning the accident?

A None that I can recall.

Q Nothing in writing?

I assume you have talked to Mr. Barrett and, perhaps, other company officials but did you submit anything in writing to them or sign any statements?

A Not that I can recall.

Q Do you have any personal notebook in which you made any notes of the accident?

A No, I have not.

MR. BOWLES: You have produced the Trial Trip Report of the PONCE DE LEON, dated August 15, 1968. Please mark this as Plaintiff's Exhibit No. 9.

(Above-described document herein marked Plaintiff's Exhibit 9 for identification, this date.)

MR. BOWLES: You have produced the Capacity Plan of the PONCE DE LEON. Please mark this Plaintiff's Exhibit No. 10.

(Above-described document herein marked Plaintiff's Exhibit 10 for identification, this date.)

MR. BOWLES: You do not have a General Arrangement Plan of the PONCE DE LEON?

MR. BARRA: I requested it and the information I received was that this Capacity Plan is the General Arrangement and Capacity Plan.

MR. BOWLES: You have produced the Engine Operational Manual for the PONCE DE LEON. I have

reviewed it and I have no need to mark it as an Exhibit.

I have also requested photographs of the PONCE DE LEON, which you have agreed to produce when you get them.

MR. BARRA: That is correct.

Q Capt. Meade, do you recall testifying at the Coast Guard in May 1973 concerning the events of the collision?

A Yes, I do.

Q Have you reviewed that testimony prior to taking the deposition today?

A I have looked over my copies of it, yes.

Q Do you have your copy of that testimony with you now?

A No, I do not.

Q Where is that?

A I have a copy home and I did not bring it with me.

Q I assume the events were fresher in your mind in May 1973, right after the collision, than today?

A Yes.

Q Would that be correct, generally?

A Yes, as best as I can, over a period of a year.

Q Captain, what is the length of the PONCE DE LEON?

A 700 feet.

Q And her breadth?

A About 1 -- can I look at this?

Q You are free to look at the documents.

MR. BARRA: You can refer to any of the documents, if you wish to do so.

A I would say about 110 feet.

Q Rather than guess, why don't we check it out.

A It is given here, breadth molded, 92 feet.

Q And her depth molded?

A 60 feet 1 5/8 inches, depth molded.

Q What were her draughts at the time of the collision?

A Deep draught, approximately 24 feet.

Q Forward and aft what?

A Again, I will have to look --

Q You may refer to your log book or other documents that give that information.

A Draught forward, 21 feet 8 inches; draught aft, 24 feet 6 inches.

MR. BARRA: Let the record show the witness

is referring to the log book, Exhibit 2.

Q Prior to the commencement of the deposition, I asked you to calculate the displacement of the PONCE DE LEON at those draughts.

What was the figure you calculated?

19,400 tons.

Q What type engines does the PONCE DE LEON have?

A Type engines?

Q Yes. Steam turbine, diesel --

A Steam turbine.

Q What is the horsepower?

A The horsepower -- here again, there are a couple of figures. Let's take it off the --

MR. BARRA: The witness is referring to Exhibit 9.

A Use the figure 32,000 shaft horsepower.

Q Captain, on your harbor maneuvering speeds, slow, slow ahead, half ahead and full; what RPM's did you use?

A This again will take a little memory. The best of my recollection, slow ahead would be 20 revolutions; half ahead would be 40 revolutions. This would be on maneuvering speed?

Q Right.

A And full ahead would be anywheres from 60 to 80 revolutions.

Q How about dead slow ahead?

A Dead slow ahead, 10 revolutions.

Q What speed at these approximate draughts and assuming still water would these RPM's produce, approximately?

A Starting with dead slow ahead?

Q Yes.

A Three to four knots. Slow ahead -- let's see -- four to six knots; half ahead, approximately 10 knots, and full ahead, approximately 12-13 knots.

Q Do you have information concerning the pitch of the propeller? Do you know what the pitch was? Is that included in any of these documents?

I looked quickly but I did not see it.

A I don't think this book deals with pitch.

MR. BOWLES: Let me see the engine manual again. I do not think that it is in there either.

Off the record.

(Discussion held off the record.)

MR. BOWLES: I will have to ask that you produce the pitch of the propeller. This may be

in the form of a blueprint, probably. Most ships are equipped with a blueprint showing the data on the propeller.

MR. BARRA: Would you rather leave a blank space and the Captain can fill it in at the signing of his deposition?

MR. BOWLES: I would like the document also but he can do that as well if he can get it conveniently.

---

Q Your vessel was on a voyage from Puerto Rico to New York?

A Yes.

Q When did you leave Puerto Rico?

A We left the previous Monday -- I willhave to consult the log on that again.

This would have been Monday, May 7, 1973.

Q How were the weather conditions on the voyage, generally?

A As I recall, the weather conditions were satisfactory, normal.

Q Would you describe your activities on May 9th and 10th. What did you do? In other words, what was your routine on the ship?

A You mean, my duties as master?

Q And your hours of work, let's say, starting from the day before the collision. Do you recall your working hours?

A Well, the working hours, as you describe them, would have been from about 0800 -- this is on the 9th, and continuing on until final permanent inspection of the bridge and equipment, which would have been about 2100 or 2200 hours.

Q Then what did you do after that?

A Well, beside sleep --

Q During the night, you were coming up along the coast, is that right?

A Yes, we were approaching the coast on the evening of the 9th.

Q Right. Did you sleep all the way through the night of the 9th or were you called on the bridge during the night?

A On the night of the 9th?

Q The 9th over to the 10th after midnight.

A As I recall, we had some fog in the early morning hours of the 10th. I can't recall approximately what time I was called but I was called, as it is customary for the master to be called when fog shuts in.

Q Do you recall what time that was, approximately?

You say the early morning hours. Do you mean before 6:00 o'clock?

A It would be before 6:00 o'clock.

Q Would it be before 2:00 or 3:00 o'clock, would you say?

A I would say, roughly -- I would say, roughly, between 3:00 and 4:00 o'clock -- 0300 or 0400.

Q Did you go to the bridge at that time?

A Yes, I did.

Q Did you remain on the bridge from then on until the collision?

A No.

Q Basically --

A Not continuously, due to the vagaries of the fog lifting, shutting in and lifting.

Q How often were you off the bridge; what hours, do you recall?

A That I wouldn't be able to recall.

Q When did you go to the bridge and remain there continuously before entering the New York Harbor?

You have arrival, in your log book, at 11:00 o'clock.

You have "0827 hours, fog, master on the bridge."

A May I consult this?

(Handing.)

Q I am just wondering what hours you were on the bridge.

A I would say I again went to the bridge about 0800.

Q And you were continuously then on the bridge until collision, coming into New York Harbor?

A Yes.

Q You were acting as your own pilot?

A Yes.

Q What time did you pass Ambrose, according to your log book?

A As per log entry, 1146.

Q What was the visibility after passing Ambrose up until the time of the collision?

A Visibility ranged from dense fog to light fog.

Q It was foggy all the time?

A Yes.

Q What was the distance from the bridge to ur bow on the PONCE DE LEON?

Well, this would have to be an approximation. The ge is slightly aft of the midship section, so this

would put the distance approximately 350 feet.

Q A little more than 350 feet. The ship is 700 feet long.

A Slightly more than 350 feet.

Q On approaching Buoy 18, and in the five minutes or so before collision, what was the visibility?

A At that point, as I recall, visibility was very poor.

Q You described that as "visibility zero" at your Coast Guard hearing.

A I would say that is a fair assessment.

Q Could you see the men on your bow?

A I could, but with difficulty.

Q You could not see much past your own bow then?

A No.

Q With this visibility?

A No.

Q And you decided to anchor in Gravesend Bay because of this visibility condition?

A That is correct.

Q Is it correct that you did not know that anchorage 25 was closed by a local notice to mariners?

A No -- that is correct.

Q Who was on the bridge with you at the time, and I am referring to the last five minutes or so before collision?

A Along with me was the chief officer and one of the third mates and of course the helmsman, the AB at the wheel.

Q Who was on the bow?

A There were other members of the crew, the second officer, boatswain and what we call the docking detail -- various members of the deck department.

Q Will you identify these people by name on the bow. Was Mr. Ahorrio there?

A Yes, Ahorrio.

Q He was second officer?

A Second officer.

Q And on the bridge, the chief officer was there, Mr. Potocka?

A Yes, right.

Q And the watch officer?

A Benson.

Q And in the engine room, who was attending, if you know?

A I wouldn't. Outside of the chief engineer, Mr. Pfahler, who would be on duty down there during this

time, I really couldn't recall who else would be there.

Q Captain, could you make a diagram for us, please, showing the layout of your bridge; in other words, the outline of the enclosed bridge areas with the wings of the bridge and showing the locations of the major items of equipment, steering wheel, radars and so on.

A I am not a good artist.

Q We will understand that it is not to scale. I looked at your capacity plan, but it doesn't show these details.

A (Complying.)

MR. BOWLES: Would you please mark the diagram drawn by the Captain as Plaintiff's Exhibit No. 11.

(Above-described document herein marked Plaintiff's Exhibit 11 for identification, this date.)

Q Is it correct that in coming in and after passing Ambrose, you were using one of these radars yourself, is that correct?

A That is correct.

Q Which one were you using?

A I was stationed at the 10 centimeter radar.

Q That is on the port side?

A Yes.

Q Did you stay right at that radar or did you go out on the wing of the bridge, to either side, to listen or look at objects?

A Occasionally, I would, for brief periods of time, I would go out to the port wing of the bridge to check on fog horns or other sounds being reported to me from the bow.

Q What scale did you have your radar on?

MR. BARRA: At what point in time?

Q Now, we are talking about, let's say, at the point where you made radar contact with the WILMINGTON GETTY.

A When? At that point in time, I would have had -- let me backtrack for just a moment.

I changed from the longer range, eight mile scale to the four mile scale. This would be on the approaches to Ambrose and for some time after passing Ambrose.

Then, at some point after that, I changed to a horter range.

Q What range was that? Was that the two mile e?

I would say the two mile scale, yes.

Q At what distance did you first sight the WILMINGTON GETTY on the radar, or the ship later identified as the WILMINGTON GETTY, on radar?

A Well, I saw -- the nearest targetto me, to put it in a little different context, was right on the edge of the two mile scale and at that time, of course, I didn't know it was the GETTY.

Q Didn't you have a ship ahead of you, about a mile?

A Yes, the SEALAND. This was the closest to me and this was the target on -- in other words, the two mile scale.

Q And then you picked up the ship later identified as the GETTY about two miles?

A Well, as I say, the vessel -- a vessel was later identified as the GETTY. This target was practically synonymous with the SEALAND vessel.

Q Let me refer back to your Coast Guard testimony, Page 7:

"QUESTION: When did you become aware of the WILMINGTON GETTY?

"ANSWER: I became aware of this particular target at about the extreme edge of the two mile -- between one and a half and two miles off."

Do you recall giving that testimony?

A Yes, I do.

Q Is it correct that you sighted her between one and a half and two miles from her?

A Yes, I would say so.

Q When you first saw her, what time was that, do you know? How long before collision?

A Do you mean --

Q How many minutes before collision did you first become aware of her on your radar?

A Aware or identified her?

Q Aware. There was a contact and then later you identified her as the WILMINGTON GETTY.

A Not more than three, four minutes -- three to five minutes.

Q When you first sighted her at between a mile and a half and two miles, what was the time interval?

MR. BARRA: What do you mean exactly by "time interval"?

Q The interval before collision. How many utes before collision did you identify her?

I would say about five minutes.

Where was your vessel located then? Was it oy 18?

A It was slightly after passing Buoy 18.

Q Did you sight her before passing Buoy 18?

A I had seen several targets, one of which was later proved to be the GETTY before passing 18.

Q That is what I mean. You sighted her before? I am not saying you identified her, but you sighted a contact which later was identified as the WILMINGTON GETTY sometime before passing Buoy 18?

A I would say a short time before Buoy 18.

Q Did she appear to be about .6 to .7 miles off Nortons Point, Brooklyn, at that time?

A This would have been difficult for me to estimate at that time. I would say that I would have estimated her distance off Point -- Nortons Point about.5 to.7 ... of a mile.

Q And was there a line of buoys including Nos. 14 and 18 which go up Ambrose Channel at this point?

A Right.

Q And if you extended a straight line on your radar, she was to the east or inside that line of buoys, is that correct?

A That is correct.

Q When you first saw her on the radar, you saw her as a contact on your radar; did you know she was

anchored at that time?

A No, I did not.

Q Did you make any sort of plot of the GETTY on your radar?

A Not a manual plot, no.

Q Did you make any kind of a plot?

A We made a mental plot of the target as well as other targets. There were several targets in the area at the time.

Q Did you watch her continuously?

A More or less.

Q After you sighted her, from the time below Buoy 18, when you saw her on the radar, were you personally always looking continuously at the radar until time of collision?

A Oh, yes.

Q Did there appear to be any movement between her and the land objects, Brooklyn, for example?

A Well, at this point, since we were underway, everything -- there was apparent movement of all targets as well as land areas.

Q Did she appear to be moving separately from he land areas, that would indicate that she had motion rself?

A I -- this -- I assessed the situation that she was a slow moving vessel.

Q You thought she was a slow moving vessel?

A Yes.

Q Did you take any bearings, put your bearing cursor on and watch her?

A Yes.

Q Did you time any of the intervals as you proceeded?

A No, not really. At these low speeds, I didn't think that we would get any information on this.

Q What speed were you moving at? What speed was the PONCE DE LEON proceeding at when you first sighted the contact, the WILMINGTON GETTY?

A I would say approximately five, six knots. This is an estimate.

Q Isn't it closer to 10 knots?

A I wouldn't say 10 knots, no.

Q No possibility of it being 10 knots?

MR. BARRA: You asked him for an estimate and he gave it.

MR. BOWLES: Please do not interfere with the deposition.

A I would not say 10 knots, no.

Q What time did you pass Buoy 14?

A I have to consult the bell book on this.

Q Would you, please.

A As per deck log book, 1302.

Q And --

A Deck bell book -- not log book. Strike that.

Q What time did you pass Buoy 18?

A 1309.

Q What was your engine setting in that interval of time?

A Engine speed, according to here, would have been half ahead.

Q Didn't you tell me at the commencement of this deposition that half ahead was about 10 knots?

A Yes.

Q Do you know the distance between Buoys 14 and 18?

A Well, here again, I'd have to consult the chart.

Q I have a copy of Chart 369 (handing).

A Somewhere in the area of a mile, by my recollection.

Q I have a pair of dividers. Would you measure the distance between Buoys 14 and 18.

A (Complying.) About 1 3/10 miles.

Q One and a quarter, let's say?

A Yes.

Q You did that in seven minutes according to your --

A According to the deck bell book.

Q From 1302 to 1309?

A Yes.

Q What speed does that indicate, one and a quarter miles in seven minutes? You have a logarithm scale here on Chart 369.

Is it a speed of almost 11 knots?

A Well, we have that indication, yes.

Q So actually your speed on sighting the WILMINGTON GETTY, was somewhere between 10 1/2 and 11 knots, is that correct?

A Let me check these figures again.

MR. BARRA: Is your question, what is indicated by the bell book and the measurement that was just taken or, again, are you asking the Captain for his estimate?

MR. BOWLES: If you want to make a distinction on those two items, Mr. Barra, you are free to argue it to the court.

MR. BARRA: I am only asking you to clarify

your question.

MR. BOWLES: We have taken data from the ship's bell book at the times of passing two geographical objects, Buoys 14 and 18, and we have measured the distance on a nautical chart, approximately one and a quarter miles, and taken the time interval of seven minutes, and I am asking the Captain what that speed indicated.

MR. BARRA: Thank you.

Q What does the calculation indicate, Captain?

A On here, the calculation would be 10 1/2 knots; something like that.

Q Approximately 10 1/2 knots to 11 knots?

A Approximately.

Q I ask you, isn't it a fact that your estimate of five knots was in error and, in fact, your vessel was proceeding at closer to 10 1/2 to 11 knots, as indicated by the geographical data and calculations?

A Well, as we have taken these measurements, I would say that the estimate of five knots was low.

Q Captain, referring to your chart, Exhibit No. 6, you have some writing and some figures on this chart. Opposite Buoy 18, you have the figure 1309.

Who put that on there?

A I couldn't identify that handwriting at this time.

Q You did not do it?

A I did not do it.

Q Would it be one of the persons on the bridge, the chief officer or watch officer?

A One of the other officers on the bridge, yes.

Q Was one of them charged with taking navigational information or plotting?

A The third mate, whose duty it was to keep the bell book and who kept the times on here, would have been the one, logically, who would have been the officer to put these on here.

Q You do not know?

A I do not know.

Q Now, there is another position with a line running to the Coney Island light at Nortons Point, Brooklyn, with the figure 1314. Who put that on the chart?

A There again, I can't identify the handwriting.

Q And there is a position right above that of 1318, is that correct?

A Right.

Q The 1314, do you know what that is intended to be?

A It appears to be a radar bearing.

Q Would that be your ship's position at 1314 hours?

A I think that is a fair assumption.

Q Would the same be true with respect to the 1318, that is, would that be the position of your ship at 1318 hours?

A The 1318 position would be almost -- it would seem to be a DR, since there is no line drawn on the chart to indicate --

Q There is a circle with a dot in the center of that, that 1318 hours?

A It could be another radar position by another deck officer.

Q Would you measure the distance between Buoy 18 and the 1314 position, please.

A (Complying.) I do not see any position. I only see a time here. I do not see a position.

Q Just take the distance from the buoy. Your record, your bell book showed that you passed Buoy 18 at 1309 hours.

A Yes, I see.

A little over a mile -- approximately a mile -- yes, approximately one mile.

Q And the time interval from 1309 to 1314 is five minutes? What speed does that indicate for your vessel?

A From Buoy 14 to 1314?

Q Buoy 18.

A Buoy 18 to the 1314 position?

Q Is that a distance of one mile and the time interval of five minutes?

MR. BOWLES: Off the record.

(Discussion held off the record.)

A I have never used this particular logarithm scale.

MR. BOWLES: Perhaps, Mr. Barra and I can stipulate. If you take one mile in five minutes, apply it to 60 minutes, we have a speed of 12 knots.

A That would appear to be correct.

MR. BOWLES: We will agree that one mile in five minutes indicates a speed of 12 knots.

Q Do you have an estimate of the speed of your vessel at the time of collision?

A Yes, I would. I think I have stated to the Coast Guard it was approximately five knots.

Q How would you explain that estimate vis-a-vis the distances shown on your nautical charts and the

calculations of speeds in those distances we just calculated, that based on the time at Buoy 18 to the time at the 1314 position, the ship covered one mile in five minutes, would indicate a speed of about 12 knots and --

A We will --

Q Isn't your estimate of the speed at collision a bit low?

A No, I wouldn't say so, because of the fact we reduced speed along here at this point.

Q Your vessel did cover a mile in about five minutes, is that correct?

A Yes, it did.

Q That does indicate a speed of about 12 knots, not five knots?

A Right at that point.

Q On coming up Ambrose Channel, did you maintain a careful listening watch on Channel 13?

A Yes, I did.

Q Did you have conversations with any vessels that were in the area also going in?

A Yes, I did.

Q You talked to the SEALAND vessel?

A I didn't talk to them. I overheard his conversation, which I took to be Sandy Hook pilot talking to

his tug boats.

Q Did you hear any other vessels commenting on the fact that there was a ship anchored off Nortons Point?

A No, I did not.

Q You never heard that at all during your trip?

No, sir.

Q Do you recall asking any other vessel about a vessel anchored off Nortons Point or in the vicinity of Nortons Point?

A I don't recall asking any other vessel on any anchorage situation.

Q At some point you did have a conversation with the WILMINGTON GETTY, is that correct?

A That is correct.

Q Is it correct that this occurred approximately three to five minutes before the collision?

A It did occur prior to the collision. I would say that that time was a little shorter than that. I would say nearer to two to three minutes.

Q I would refer you to your Coast Guard testimony, Page 9, given on May 17, 1973, the week after the accident:

"QUESTION: What was the length of time

between your communications with the GETTY and the collision?

"ANSWER: To the best of my recollection, this would have been three to five minutes."

Do you recall giving that testimony?

A I recall that testimony-statement, yes.

Q That was only a week after the collision?

A That is correct.

Q What was the substance of your conversation with the WILMINGTON GETTY?

A Well, to backtrack just a moment. When I became aware of the GETTY's position and before I'd ascertained her identity, I called a vessel underway off Nortons Point. To my recollection, I asked what is its course and intentions.

Now, if you wish, I will continue with this or do you want my actual conversation?

Q Right. What was your conversation with the WILMINGTON GETTY?

A After the GETTY had identified himself as an anchored vessel, I identified myself as the PONCE DE LEON, which I had done previously, and then I believe I stated to him that it was my intention to pass him and go into Gravesend Bay and anchor.

Q You told him you were going to go between him and Brooklyn, or how did you intend to pass him?

A To the best of my recollection, I told him I intended to pass between him and Nortons Point.

Port to port passing?

Port to port passing.

Q What time did you change your course after passing Buoy 18, do you recall?

A Very shortly after passing 18.

Q Your bell book has 010 degrees at 1311. Did you order that course?

A I believe I did.

Q That would be approximately three to four minutes before collision, is that correct?

What time was the collision?

A This is what I want to refresh myself. I think it was 1314.

Q There is nothing in the bell book as to the time of collision.

The time of casualty in the Coast Guard report, you have 1314 hours,

A I would say that is approximately correct.

Q So that 1311, when you changed course to 010 degrees, that would be about three minutes before

collision, and this would be about the time you had radio conversation with the WILMINGTON GETTY?

A Approximately right.

Q Did you turn right before or after you had contact with the WILMINGTON GETTY?

A I misunderstood now. Let's go back to Buoy 18. I came around to 010.

Q Right.

A Then I had my conversation with the WILMINGTON GETTY.

Q You turned right first?

A Yes, turned right first and then continued coming right to pass him on a port to port basis.

Q Did you ever steady on 010?

A Not to my recollection. This was simply a turning maneuver, to start turning.

Q As you commenced your turning maneuver, what did you order?

A Well, it would have been a right rudder order. At that point we did not steer courses.

Q I was wondering why the entry for 010 is in the book.

A That was to bring the ship around to a primary course, subject to further adjustments.

Q You never did steady on 010?

A No, sir.

Q Do you recall what you left it at; what your right rudder order was?

A I can't recall.

Q Five, ten, hard or whatever?

A It would have been more than -- it would have been a considerable order in view of the fact that we were at low speed and it would take that much more rudder to turn the ship.

Q When you say low speed, we already established that you were at 10 knots, according to the data on the chart and the calculations, up to Buoy 18.

A Up to Buoy 18.

Q Even after Buoy 18, your chart and times would indicate 12 knots. Is that a low speed?

A 12 knots would not be -- that would not be a low speed.

However, going back to the time of collision, I think I have indicated before that I had come down to a dead slow ahead, according to the log book.

Q The order for dead slow ahead is in the log book, but it would take some time to decrease your speed over the water and over the ground, is that right?

A That is right.

Q And the chart indicates 12 knots between Buoy 18 and the time of the collision, does it not?

A Did we ascertain that? I didn't think so. I thought 12 knots was between Buoy 18 --

Q And the position on your chart to 1314. Isn't that your collision position, approximately? You told the Coast Guard that.

A Yes.

Q If we take a mile in that five minutes, that indicates a speed of 12 knots?

A That would.

Q And that is not a low speed, right?

A It is not.

Q As you came right, did you determine the distance that you ~~had passed~~ would pass the GETTY, your ~~CSA?~~ CPA Did you ever make that calculation? KCE DAMAGE

A At those short distances, I don't think it would have been possible to calculate the exact distance. I had planned and hoped to clear her.

Q By what distance? Do you have an estimate of a distance that you would clear her?

A Not a linear distance, no.

Q On making your turn to the right to pass

between the GETTY and the land, did you consider the effect of the flood current underfoot; what effect that would have on your vessel's navigation?

A I knew there was some flood running.

Q What is your estimate of the flood?

A At that point, it was not a full flood.

Q Wasn't it about half a knot?

A About half a knot, yes.

Q What did you intend to do at that point?

A I intended to pass to clear the GETTY -- pass between her and Nortons Point and proceed into Gravesend Bay and anchor.

Q What was the distance to the GETTY when you had this radio conversation with her, your first radio conversation?

A Well, to the best of my recollection -- let me look at the chart again -- yes --

MR. BARRA: I would like to clarify the question. I am a little confused when you say "first radio conversation". The Captain testified he initially called and received no answer and then subsequently had a conversation. Do you mean from his calls or do you mean from the actual conversation between himself and the officer

on the GETTY or whoever was on the GETTY?

MR. BOWLES: Let's take both.

Q When did you first call the WILMINGTON GETTY, at what distance?

A I was calling the vessel, which later turned out to be the GETTY, say a mile and a half.

Q You called her at a mile and a half?

A A mile and a half, not knowing it was the GETTY. I repeated the calls, as I have mentioned before, "Calling the vessel underway off Nortons Point."

Q At Page 8 of your Coast Guard testimony, you testified you called the ship off Nortons Point requesting his intentions and your answer: "I had no answer at first. I repeated this question and I would say after, from one to two minutes, received an answer from the GETTY --" and I won't read the whole thing but he told you he was anchored off Nortons Point.

One to two minutes added onto the three to five minutes would only mean, at most, five or six minutes before collision that you commenced calling him; wouldn't that be correct?

A It is my recollection it was -- I am confused.

Q Where was your ship when you first commenced or when you first made attempt to contact the WILMINGTON

GETTY?

A Still proceeding up Ambrose Channel.

Q Below Buoy 18?

A Below 18, yes -- when you say below 18, south of 18?

Q South of Buoy 18.

A Yes, south of Buoy 18.

Q You still thought she was underway at that time?

A Right.

Q There was some heavy traffic at that time on the radio?

A Yes, there was.

Q What distance were you from the GETTY when you finally got in communications with her and learned she was anchored?

A I would say less than a mile.

Q About a half mile?

I think you testified at the Coast Guard it was a half mile.

A I would say that is a fair assumption, as I recall it.

Q That would be after you passed north of Buoy 18 at this time?

A Right.

Q Did you hear any fog signals from the GETTY at any time before collision?

A I don't know.

Q Were any fog signals from an anchored vessel reported to you before the collision?

A To my recollection, no.

Q What is the fog signal for an anchored vessel in that water?

A Rapid ringing of the bell each minute, for five seconds.

Q Were you aware that the chief officer, Mr. Potocka and Mr. Ahorrio both testified they heard and reported those signals?

A As I recall, at the Coast Guard, Mr. Ahorrio reported hearing the fog signal from his position on the bow. Mr. Potocka -- does the Coast Guard testimony show that he reported it to me?

Q Yes.

A If he did, I didn't get it.

Q Page 5 of Mr. Potocka's testimony at the Coast Guard:

"QUESTION: Do you remember hearing any signals or any sound?

"ANSWER: Yes.

"QUESTION: What did you hear?

"ANSWER: About three to four minutes before the collision, I heard a faint ship's bell.

"QUESTION: Did you report to the master?

"ANSWER: Yes, sir.

"QUESTION: What was his response?

The answer at that point "I was on the starboard wing of the bridge and the ship is 92 feet abeam and I ran from the starboard side of the port side of the wheelhouse to report to the master and he was outside at the time and he gave an order for right helm."

Do you recall that occurring?

A I recall giving the order for right helm, as stated there. I was not aware that this had been reported to me and I am not doubting Mr. Potocka's testimony. There are other circumstances here and under the circumstances --

Q Why did you give right helm?

A I saw the GETTY on radar. I saw that she was getting -- or I was getting into a close situation and I was trying to avoid her.

Q Are you aware of the requirement of Article 16 to stop your engines on hearing the fog signal or

signal of a vessel whose position is not ascertained?

A I am aware of that rule, yes.

Q At no time prior to the collision did you stop the engines?

A No.

Q Or reverse them?

A No.

Q Had you ascertained her position, that is the WILMINGTON GETTY?

A I could see her quite clearly on radar at this point.

Q And you knew she was anchored?

A At this point, I did, yes.

Q You knew she wasn't going to move to get out of the way since she was anchored?

A She was anchored.

Q She couldn't move in a short time?

A No.

Q What was your heading or course or compass heading at collision, do you know?

A I don't think I can give you that. I doubt that we have any record of that. I could estimate the angle of collision but the actual compass course, I think we were in a situation where I had the rudder hard right

or thereabouts, in attempt to bring the ship around. As I say, we weren't steadying on any particular course.

Q What is the collision angle that you had, approximately?

A I would say approximately close to 45 degrees.

Q That is between your port bow and his port side?

A Right (indicating).

Q Let me go back and summarize somewhat:

You were proceeding inbound in dense fog.

A Yes.

Q You were proceeding up the channel and you saw the GETTY on radar at a distance of about a mile and a half to two miles, is that correct?

A Right.

Q It was clear to you at that time that she was outside the channel to the east of the line of buoys of the channel, is that correct?

A That is correct.

Q You did not maintain a radar plot of her position to determine her course and speed?

A I did not maintain a chart plot, no.

Q But on your estimation, you thought she was underway rather than anchored at that time?

A That is correct.

Q You turned out of the channel to anchor the PONCE DE LEON because of the dense fog?

A Correct.

Q You talked with the GETTY on the radio and learned she was anchored, some three to five minutes before collision?

A Right.

Q And you told her you were going around her; in other words, between her and Nortons Point, to go to anchor yourself?

A To the best of my recollection, those are my words.

Q Did you know she was a tanker, from her identification as the WILMINGTON GETTY?

A He did not identify himself as a tanker. He simply gave the name of the vessel.

Q You heard her fog signals or some people on your vessel claim they heard the fog signals?

A Yes.

Q You do not remember that being reported to you?

A Right.

Q If those were reported to you, you would have the duty under Article 16 to immediately stop

your engines?

A Right.

Q You never did stop the engines?

A Did go to dead slow at that point.

Q Did you hear a ~~tanker~~ danger signal, four short blasts, from the WILMINGTON GETTY?

A I did not hear her.

Q Did you sound any whistles yourself other than fog signals?

A We were constantly sounding fog signals.

Q I said, other than fog signals.

A No.

Q Did you sight the WILMINGTON GETTY before collision?

A Yes, I did.

Q At what distance?

A She was barely visible just seconds before collision. That is the nearest I could estimate -- it would certainly be less than a minute.

Q At the time of sighting her, if you had backed your engines full astern, would you have had time to stop your ship before collision?

A I would judge not.

Q In other words, you could not stop in the

distance of visibility when you sighted her visually?

A No.

Q Captain, did you misjudge the speed of the PONCE DE LEON? What happened? Why did this collision occur?

A Primarily, I misjudged the situation of the WILMINGTON GETTY. I believed up until almost the last moment, when he so informed me, that he was underway. Therefore, I had maneuverability to avoid him. When I finally did ascertain that he was an anchored vessel, we were simply too close.

Q That was a distance of a half mile, wasn't it?

A About that.

Q And you continued on a right rudder, continuing your attempt to go ahead of him?

A Right.

Q If he were underway, actually proceeding toward you, you were still intending to turn in front of him, without --

MR. BARRA: I do not believe the Captain testified that he was proceeding toward him. He said he was underway.

Q You turned right out of the channel in the

direction of the WILMINGTON GETTY, before your radio contact, isn't that correct?

A Right.

Q You were turning toward him before the radio contact?

A Right.

Q You did not know his course and speed at that time?

A No.

Q If, in fact, he were going southerly, you would have been turning right into his path?

A Your statement is true as far as it goes, but may I state briefly here that I was trying to assess the situation as best I could and in all my experience of piloting, I have never seen a vessel as large as the WILMINGTON GETTY bound south from his position. It was my assessment that he was underway and headed north toward the Verrazzano Bridge. If he was heading south, he would have been heading for a ~~show of~~ shoal water.

Q You had him under observation from the time he was a mile and a half from you and if you plotted, you could have determined from your own information that he was stationary, couldn't you, if you had plotted that?

A If I had plotted, I would think the plot would have shown that either he was stationary or underway, very slow. At those low speeds, there is very little difference.

Q Coming up the channel, you were on a course, according to your bell book, of 345, passing Buoy 18, until you turned right?

A Right.

Q If you had turned, continued on that course, there would have been no collision?

A Right.

Q And the collision only occurred after you commenced your right turn, to go into the anchorage area?

A That is correct.

Q Did the Coast Guard take action against your license as a result of this accident?

MR. BARRA: I am going to object to the question.

MR. BOWLES: Your objection is noted.

Q Please answer the question.

A The determination of the Coast Guard was probation for one year.

Q They did not suspend your license?

A They did not suspend my license.

MR. BOWLES: I have no further questions of this witness at this time.

CROSS EXAMINATION

BY MR. BARRA:

Q Captain, do you have a license issued by the United States Coast Guard?

A Yes, I have.

Q And what is that license?

A Master, oceans, any tonnage.

Q Do you have any pilotage endorsement on that license?

A Yes, I have.

Q What are the specifications of that endorsement?

A Endorsement is first class pilot on the waters of New York Harbor, upper and lower bay, plus pilotage for the ports of Puerto Rico: San Juan, Ponce and Mayaguez.

Q Captain, how long have you been going to sea?

A About 30 years.

Q How long have youbeen a master of a vessel?

A I have served as master off and on for 20 years.

Q Could you give me a rough approximation of how many times you came in and out of New York Harbor and, particularly, the area we are discussing, off Nortons Point?

A I would say very many times.

Q Let's say, in a year, how many times do you go in and out of New York Harbor?

A Approximately 50 times a year.

Q So you have literally gone past this spot about a thousand times?

A Right.

Q Captain, the run you were on, is that a customary run between Puerto Rico and New York? ere you customarily on this run?

A Yes, I was.

Q How often did you go between Puerto Rico and New York? What was the voyage and what was the schedule?

A One round trip a week.

Q You testified that when you arrived in Ambrose Light station, that it was dense fog and you proceeded up Ambrose Channel?

A Yes.

Q Is this a customary procedure as far as

the PONCE DE LEON is concerned?

A Yes, it is.

Q Were there other vessels that were proceeding up Ambrose Channel at the time of your arrival at 11 --

A 46.

Q -- 1146, at Ambrose?

A Yes, there were.

Q Were you in voice communication with any of these vessels at that time?

A Yes, I was.

Q What vessels were they?

A One of them was the SEALAND BOSTON.

Q Did you discuss intentions with the SEALAND BOSTON at this time? This is out at Ambrose now.

A Yes, I did.

Q What was the gist of that conversation?

A I asked the SEALAND BOSTON, who apparently had a Sandy Hook pilot aboard, and who was underway up Ambrose Channel at the time, we discussed his intentions of speed, course and intention.

Q What did he advise you?

A He advised me that he was proceeding forthwith up Ambrose Channel toward the Verrazzano Bridge.

Q You were going to follow him?

A I was going to follow him.

Q Any other vessels at Ambrose Light station that were proceeding toward New York Harbor at this time?

A There were two or three at anchor off Ambrose Light station and in the same conversation with SEALAND BOSTON, advised me they were about to pull up their anchor and proceed. However, I did not talk to them.

Q Did these other vessels, in fact, follow you up Ambrose Channel?

A Yes, they did.

Q In other words, the SEALAND BOSTON was approximately how far ahead of you?

A At the time I passed Ambrose, he was about a mile ahead of me -- at least a mile.

Q And there were two or three vessels astern of you that were following you up Ambrose Channel?

A Yes.

Q Can you estimate the distance that each of these vessels was?

A I would say approximately a mile or, possibly, a little bit less.

Q Is this the customary practice with respect

to vessels proceeding up Ambrose toward New York Harbor?

A Yes, it is.

Q Were there vessels outbound, outside of Ambrose Channel, during this period of time?

A Yes, there were.

Q Can you give me an estimate of how many vessels you passed from Ambrose Light Station up to, say, the position off Nortons Point?

A I would say four or five.

Q Did you maintain your position behind the SEALAND BOSTON while proceeding up Ambrose Channel?

A Yes.

Q Did you maintain the relative position for the entire time proceeding through Ambrose Channel?

A I don't quite understand the question.

Q You testified that you followed and, in essence, followed the SEALAND BOSTON?

A Right.

Q At a distance of approximately a mile?

A Right.

Q My question is, did you follow at this relative distance from the time of your entering Ambrose until the time of collision?

A Yes, I did.

Q So the SEALAND BOSTON was proceeding at the same speed you were proceeding at?

A I would say so.

Q How about the vessels astern of you?

A I would judge, watching them on radar, they were proceeding at about the same speed.

Q Four or five of you were all in tandem, proceeding up the Ambrose Channel at approximately the same speeds and courses?

A Right.

Q You mentioned it was dense fog. Did the fog vary at all while you were proceeding up Ambrose?

A There was a slight variation in the density of the fog; at times it was very thick; at other times it thinned out a bit.

Q Now, Captain, what was your intention upon proceeding, when you commenced proceeding into Ambrose Channel, with regard to your tugs? Did you expect to pick up tugs at any point in time?

A I did, at that point.

Let me amend that. I had spoken to our operations department, giving them my position and this is a matter of routine with them, to order tugboats.

Q And had tugboats been ordered?

A They had been ordered, yes.

Q Did there come a point in time where you were advised of the availability or non-availability of these tugboats?

A I became aware at a point along Ambrose Channel here (indicating) that tugs were at their piers, fogged in by dense fog, and they would not be on hand to dock me.

Q When you received that information, what course of action did you then decide on?

A Well, knowing I'd have no tugs available, I decided to go into Gravesend Bay and anchor until visibility would improve and tugs would be available.

Q Were there any other safe anchorage areas other than Gravesend Bay anchorage?

A Not at that point.

Q Did the SEALAND BOSTON, who was ahead of you, did she anchor, if you know?

A No, she didn't, to my knowledge.

Q Did she pick up tugs?

A She had tugs.

Q Were you in constant voice communications with the various vessels, SEALAND BOSTON, for example?

A Well, I was monitoring, of course, Channel 13

and listening to the conversation on the air, trying to assess my situation, listening to their situation.

Q What was the SEALAND BOSTON's situation?

A Her situation was, as I recall, that she was being advised by her tugs that they were there and waiting for her. I assume that she went in and met them and docked without incident.

Q You heard this all on Channel 13?

A Yes, I heard this on Channel 13.

Q Captain, when you were proceeding up Ambrose Channel, did you maintain one speed during this entire maneuver up Ambrose Channel?

A Well, no. The speed varied. The speed varied after passing Ambrose. I'd have to consult the bell book here, again.

Q But were you giving various speeds while proceeding up?

A Yes.

Q What determined what varying speeds you were giving? What entered your determination to give varying speeds? Why didn't you proceed on one speed?

A Well, as I said, the fog was variable and at some point it lifted slightly and, in fact, there was a point when visibility was pretty close to -- I don't

know what it was, but it did improve and being that it was improving and hoping it would continue to improve, I went up to a little higher speed.

Q As part of your consideration of what speed to make, were you taking into consideration what speed the SEALAND BOSTON was doing?

A Yes, I was.

Q So in other words you were maintaining that relative position with the SEALAND BOSTON?

A Yes.

Q As he increased speed, you increased speed?

A Right.

Q Would the same hold true for the vessels astern of you?

A I was also watching them; of course, they would be duty bound to, more or less, watch my position. To the best of my recollection, we maintained at least a mile between us.

Q Captain, once you enter Ambrose Channel, is there any place, until passing Buoy 18, that you could safely anchor your vessel?

A No.

Q Could you proceed safely at dead slow up Ambrose Channel, taking into consideration the vessels

that were astern of you?

A I would say that this would not be a seaman-like maneuver, and I would judge that it would not be safe, no.

Q Captain, I would like to take you step by step as to what was going through your mind and what actions you took, and we will take just prior to Buoy 18, if we can.

You testified, at some point in time prior to Buoy 18, you made this decision, because your tugs were not available to anchor in Gravesend Bay, which is the only safe anchorage available, is that correct?

A That is correct.

Q You mentioned that you sighted a vessel or a contact on radar when you were south on Buoy 18, is that correct?

A Right.

Q You also testified that you called over Channel 13 for the vessel underway off Nortons Point to identify itself?

A Correct.

Q Is there any question in your mind that this was prior to coming abeam of Buoy 18?

A When you say, by question in my mind, you mean

the fact that it was or was not underway?

Q What I am asking, are you positive that you initiated the calls?

A Yes.

Q As to whether a vessel was underway, what her course and intentions were, that is the vessel at Bortons Point; that this initial communication by you was prior to coming abeam of Buoy 18?

MR. BOWLES: I think you are leading this gentleman into error which you will see if you refer back to the Coast Guard report.

Furthermore, the questions are improper as leading. You are trying to suggest something that may not be true.

MR. BARRA: I believe he testified on your direct examination that the calls were initiated prior to Buoy 18, and I am just trying to get that straight.

MR. BOWLES: You are doing an awful lot of leading.

Q When did you initiate your call over Channel 13 to the contact, which eventually turned out to be the WILMINGTON GETTY? When exactly was it? Was it prior to Buoy 18 or after Buoy 18?

A I would say it was prior to Buoy 18.

Q Now Captain, you mentioned that from your assessment of the situation, you felt that the contact, which turned out to be the WILMINGTON GETTY was underway.

What went through your own mind in making this assessment?

A Well, the thing that was going through my mind was the mental picture of a situation that I had seen many times before, where vessels in-bound to New York Harbor, pull over approximately in that area where the WILMINGTON GETTY was.

Q Captain, if I can just stop you right there.

You pulled over. Why would a vessel pull over?

A They would have pulled over on receiving notice that there would be some delay in tugs meeting them or some change in their docking orders which would make it later and that they were simply getting out of the channel, not to block things, but to just proceed under very slow speed in "dogging it", as the saying goes in the trade, until the tugboats meet them there.

Q Captain, let me ask you this:

Did you ever see, in your experience, and you testified that you have been in and out of this

location a thousand times, that is in this location, in your career; did you ever see a vessel at anchor like the WILMINGTON GETTY in this location?

A Not to my recollection.

Q Did you ever see a vessel heading south that was in that position?

A Not a large vessel the size of the WILMINGTON GETTY, no.

Q So that your assessment of the situation on your radar and approaching Buoy 18, was that this blip or contact was "dogging it", as you said, proceeding slowly north?

A That was my assessment at the time.

Q As you came abeam of Buoy 18, what orders did you give?

A I told the helmsman to come right to, I think the course was 310, which was a primary course. As I stated before, we don't ordinarily steer compass courses at this --

MR. BOWLES: 010, I believe it was. You said 310.

THE WITNESS: No -- I am sorry. 010 is what I meant to say.

A (Continuing) This maneuver was more for the

helmsman's convenience than anything else, to get him steadied up and get the ship swinging and from there on we'd use left and right rudder.

Q You have already testified that this was a turning maneuver; you were constantly turning, is that correct?

A That is right.

Q Captain, is there any reason why you couldn't turn or give much more right rudder when you were making this maneuver? Was there any other consideration entering your mind?

A Consideration of draught. I didn't want to get too close to Hortons Point for fear of running aground.

Q Did you feel that the course which you were steering or the right turn that you were steering was the farthest right you could come in safely navigating your vessel?

A I did, at that point, yes.

Q Did you feel, at that point, if you came any further right that you might possibly go aground?

A I had that fear, yes.

Q So this entered into your mental analysis of the situation?

A Yes -- yes, it did.

Q Captain, now, your vessel is swinging right as you are coming north of Buoy 18.

Can you tell me again when you received information from the WILMINGTON GETTY that she was not underway but was at anchor?

A Yes, subsequent to passing Buoy 18, I got an answer from the WILMINGTON GETTY, stating that -- giving his name and the fact that he was at anchor off Nortons Point.

Q Captain, what options did you have open to you at this particular moment and this, to me, is the critical moment? You are now advised that this vessel is anchored. What options did you have?

A Well, I had the option of coming full astern on the engines in an attempt to avoid the GETTY.

Q Why didn't you do that?

A I didn't do it because I knew that I had some flood tide under the stern. I knew I was so close -- in close proximity to him.

MR. BOWLES: At what point exactly in time is it that we are talking about?

MR. BARRA: The point in time that this Captain is advised by the WILMINGTON GETTY that he is not underway but at anchor.

MR. BOWLES: That I understand is about a half mile from the WILMINGTON GETTY.

THE WITNESS: That is correct.

MR. BOWLES: And three to five minutes befor the collision.

THE WITNESS: I think that is what I said before.

A (Continuing) Going back to options, before: One was coming astern on the engines, and I discarded that option for the reason that I had vessels closing in on me astern. They were also fairly close and the normal action of coming astern on the engines is to slow your stern to port and your bow to starboard, which would put me athwart the channel and having a flood tide at the same time and I had fear I'd be set down bodily on the GETTY.

Q Now you are coming right. What about an option of turning left and going to the west of the GETTY?

A That would have been dangerous under the circumstances, since I had outbound traffic coming up Ambrose Channel -- shall we say, outward bound.

Q And that leaves one other option, coming right?

A Coming right.

Q Which is what you did?

A Right.

Q Were you considering also at this time, Captain, the fact of the low water off Nortons Point to your starboard side?

A I was.

Q Did this affect your situation as to how much right rudder you could give?

A Yes, it did. I was afraid to turn too sharp.

Q Captain, let's go back a step, when you are just coming up on Buoy 18, and I would like to ask you at that point in time, prior to your maneuver of coming right, if you are aware that the WILMINGTON GETTY or any vessel in that particular position were at anchor, what maneuver would you undertake?

A Well, if I had known she'd be at anchor at that point, I believe I would have continued on present course to pass her on a starboard to starboard situation and then turn into Gravesend Bay, after passing her, knowing that she was not underway heading in the same direction I was.

Q Why didn't you do that in any event even though, let's assume that you thought she was slowly

inching her way up Ambrose Channel?

A Having this mental assessment that she was underway, heading north up Ambrose Channel, I didn't know, under those conditions but what I might be crossing her bow or she would be crossing my bow at a dangerous distance.

Q Let me ask you this.

At Buoy 18 or prior to reaching Buoy 18, how many targets were on your radar at that particular time?

A The nearest I can recall, about eight.

Q Do you customarily, when piloting in close waters such as these, make manual plots of each vessel on your radarscope?

A Not in these extreme close quarters, in getting up into the upper bay, no.

Q Captain, let me ask you this:

In your experience as a master, would a vessel that were swinging from an ebb to flood tide, at anchor, would she give the appearance of moving through the water, on radar?

A At low speeds, you could get that assessment on that.

Q Captain, let me ask you this:

A lot has been made about the speed and so on of the vessel, looking at the bell book and scientically doing it on the chart and so forth and so on. I noticed that the times in the bell book are in minutes.

Do you put seconds? What is the procedure on what time would be put in, for example, passing of a particular buoy?

A Well, the mate on watch, usually the third mate will wait until we have the buoy close and then look at his watch, synchronized with the ship's clock, and put the time that he has on his watch.

Q Will he take the closest minute?

A Yes.

Q He didn't do half minutes or quarter minutes?

A No.

MR. BOWLES: The best person to ask that would be the third mate. The Captain didn't put the marks on the chart.

MR. BARRA: That is what I am driving at, but you had him testify as to what all the different speeds were.

Q Would the same thing be done at the next buoy?

A Yes, customarily.

Q Can you tell if we were measuring minute by minute, is it possible that when taking the closest minute, it wouldn't be exactly seven minutes, precisely?

A It is possible.

Q Could it be eight minutes?

A Could be.

Q Or nine minutes, 30 seconds each way?

MR. BOWLES: Could it be six minutes?

A It is possible

Q Since we measured the distance of passing Buoy 14 at 1302, passing Buoy 18 at 1309, which was a space of seven minutes; would you consider a measurement of speed of the vessel run in this short period of time, precise?

A No, I would not.

Q Let's take, for example, your statement that it could be 30 seconds on each side of each reading; it could be as much as nine minutes then?

A Could be.

Q Captain, I would like you to take the logarithm scale that we have, so scientifically done before --

MR. BOWLES: It couldn't possible be nine minutes.

MR. BARRA: I think the Captain testified

that it could be 30 seconds on each side of each reading.

MR. BOWLES: That would make it one minute, and make it eight minutes.

MR. BARRA: It would make it eight minutes?

MR. BOWLES: The distance between Buoys 14 and 18 was one quarter miles, that we measured. That is accurate.

MR. BARRA: Yes.

MR. BOWLES: No question about that.

MR. BARRA: I think the Captain said 1.3, but I will give you the benefit --

MR. BOWLES: I was giving you the benefit.

A Talking about eight minutes instead of seven.

MR. BARRA: Was that the point we measured?

MR. BOWLES: It was one and a quarter miles. You want to make it eight minutes?

MR. BARRA: Make it one and a quarter miles at eight minutes.

MR. BOWLES: What speed did you get for one and a quarter miles at eight minutes, Mr. Barra?

MR. BARRA: Nine and a half knots.

MR. BOWLES: Let's do it for six minutes.

MR. BARRA: I am conducting my cross exami-

nation. You have the right on your re-direct, Mr. Bowles, to ask any questions you want.

MR. BOWLES: You just did that for eight minutes, not mine.

Q All I am driving at with this exercise is that in measuring such a short interval of time, can you get an accurate speed of the vessel?

A I would say absolutely not.

Q So it can significantly vary by at least two knots or sometimes three or more than that?

MR. BOWLES: Objection, leading.

A Yes.

Q Captain, are you familiar with the speed of your vessel through the water as far as visually observing it?

A Yes, I am quite familiar with seaman's eyes, we call it.

Q Is this the way you estimate the speed of the vessel?

A When I am making a quick assessment of the speed, yes, I do.

Q Were you making these types of quick assessments while proceeding up Ambrose Channel?

A Yes, I was.

MR. BARRA: I have no further questions.

RE-DIRECT EXAMINATION

BY MR. BOWLES:

Q Captain, for navigation, particularly dead reckoning, the typical accurate method of navigation is to measure the time that you pass fixed objects?

A Yes, fixed objects.

Q You measure the distance, take the interval of time and make a calculation of speed; isn't that method more accurate than someone's eyeball estimation of speed?

A It would be, assuming that these fixed objects are in their charted position.

Q You have no question about Buoys 14 and 18 being in their proper location?

A I have not been notified that they weren't, but that is always possible.

Q You mentioned you were in radio contact with SEALAND BOSTON proceeding about a mile ahead of you, is that correct?

A Yes, this was around the entrance to Ambrose Tower.

Q At the point while you were passing Buoy 18, was the SEALAND BOSTON still about a mile ahead of you?

A She was a little less than that. At that point, I observed her to slow down; to what extent, I don't know, but she was closer than a mile.

Q She would have been closer to the WILMINGTON GETTY than you were at that point?

A Yes.

Q Did you ask her if she knew what the vessel off Hortons Point was and what she was doing?

A No, I was directing my attention to the vessel off Hortons Point. I didn't watch the SEALAND BOSTON.

Q Your mental assessment of what the WILMINGTON GETTY was doing was quite in error?

A As it turned out, yes.

Q Had you made an accurate plot of the WILMINGTON GETTY, you could have determined that she was stopped or moving very slowly, isn't that correct?

A Well, you mentioned "accurate plot", I didn't consider that was possible under the circumstances due to the very slow speeds involved.

Q I think we have established that you were not at such a slow speed. You were doing more like 10 knots rather than five knots?

A (Nodding yes.)

Q If you simply measured the distance to the

WILMINGTON GETTY, put bearing cursor and strobe on the WILMINGTON GETTY and watched the distance that that changes over timed intervals of one or two or three minutes, based on knowing your own speed, if you had an accurate estimate of that, couldn't you tell if she was stationary or moving --

A What was the last part?

Q Couldn't you tell if she was stationary if you knew your own speed? You timed the apparent change in your position. You measure that; take the distance to the WILMINGTON GETTY as a starting point, wait one minute or two minutes or maybe three minutes and measure that distance and you would get the relative distance that she would appear to move on the radarscope, isn't that correct up to that?

A Theoretically possible.

Q Isn't that correct?

A Yes.

Q If you compared that precise interval as compared to yourown speed, and if she was anchored, wouldn't that indicate zero knots, that she was stationary?

A Not necessarily. If she was underway at one or two knots, the distance and time involved would have been

almost the same as if she had been at anchor.

Q But it would indicate very slow speed?

A That is right.

Q If she were going that slow -- don't you frequently have the occasion where you plot something and you get a reading or calculation of one or two knots, then don't you assume that that vessel is actually dead in the water, allowing for error in calculations?

A Not that frequently. It does happen. Situations like this are very infrequent.

Q If at any time a mariner determines, in using radar, that something is moving slow, can it be determined that something is dead in the water because of the inaccuracy of the plot?

A No.

Q You did not attempt to determine any of these things? You made no actual measurements to attempt to make a rough estimate of her actual motion?

A I wouldn't say it was --

Q Did you put a bearing cursor and distance on her and make measurements over timed intervals?

A Yes.

Q What did you determine?

A I determined that she was proceeding very slowly. I had the thought that she was still underway, proceeding very slowly.

Q At what speed?

A That wasn't possible to determine.

Q Didn't you also consider that she was possibly dead in the water at the time?

A That possibility crossed my mind.

Q When you see a contact on your radar, and especially if that contact happens to be near a fixed object, can't you also tell whether that vessel is moving simply by watching the relationship of that radar contact vis-a-vis the known fixed object, stationary object?

MR. BARRA: In what period of time?

MR. BOWLES: In any period of time.

A I won't say in a short period of time, but over an extended period of time, it may be possible.

Q How long an extended period did you need; one, two minutes?

A Not too long. Just looking at the chart in front of me, in attempting to answer your question, we don't normally have your radar or cursor. We have several targets on the scope now. The SEALAND BOSTON, Nortons Point and

the WILMINGTON GETTY. I am jumping from one to the other, keeping track of all these situations at the same time and where I have said I had seven or eight radar contacts on there, I am watching all this traffic at the same time and coming back again to the GETTY; where there has been a slight change in the bearing, there is not enough information for me to determine whether she is stationary or not.

Q But you assumed that she was either stationary or dead slow in the water, very slow?

A Yes, that is correct.

Q Could you see the SEALAND BOSTON coming to her approach, moving faster than she was?

A Yes, this appeared to be. The SEALAND BOSTON had apparently slowed down and was waiting for tugs and whatever. For a period of time I saw one large blip up there. Subsequently that blip separated into two blips; one being the SEALAND BOSTON and the other turning out to be the WILMINGTON GETTY. They were apparently quite close.

At that point, I realized I had -- there was several targets on the scope, as much as seven or eight, but I realized I had two that I had to watch at the same time, still thinking the GETTY was underway.

Q You saw the SEALAND break away from her?

A I did, as I testified at the Coast Guard.

Q After coming up to Buoy 18, were you on the radarscope the whole time during the collision?

A I would say in -- very much so, yes.

Q What do you mean by "very much so"?

A People would be calling out information. The man on the other radar would call out some information. I had popped out on the bridge, hoping for a break in the fog.

As I say, this fog was not stationary. It was blowing across in segments. I'd see a break, jump on the bridge --

Q Between five minutes of passing Buoy 18 and the collision, you did step out on the port wing of the bridge at least once?

A A very brief time.

Q Were you looking or listening for her signals? What were you doing?

A I was attempting to see through this drifting fog, if I could see her, plus the SEALAND BOSTON, whatever.

Q But in this time you were turning to the right going toward the WILMINGTON GETTY, isn't that

correct?

A Correct.

Q So you did not keep a continuous watch on the radar and on the GETTY in this period of time when you are going toward her, looking out at the fog for --

A This was for one or two seconds.

Q You did it only once?

A I would say so, yes.

Q You have identified this (indicating) as the collision position before --

MR. BARRA: This is not a position you placed on the chart?

THE WITNESS: No, right.

A We have ascertained the time was 1314. That was correct. I would say this is the approximate position.

Q Don't you have your Coast Guard report? You gave a bearing and position in that. How did you determine that?

I would like a collision position marked on this chart.

MR. BARRA: To the best of your recollection, place a collision position on this chart.

A (Complying.)

Q Just circle that and write collision.

A (Complying.) I will write "coll".

Q If we put a straight edge along the channel limit extending up from the Ambrose Channel, will you measure the distance from the collision position to the extension of the channel.

A About 250 yards.

Q I have got 375, approximately.

MR. BARRA: Excuse me. Off the record.

(Discussion held off the record.)

Q Approximately 375 yards?

A Yes.

Q When you spoke to your tugs, your Moran tugs, you switched channels, didn't you?

A What?

Q You switched to another channel, other than 13?

A Yes. The Moran frequency is Channel 7A and --

Q Right.

A And although they do use 13.

Q You testified in the Coast Guard, you switched off Channel 13 to talk to your tugs.

A As I recall, I did, to 7A.

Q Are you sure the SEALAND BOSTON was not talking to its tugs on 7A?

A I am not sure that he wasn't but let me digress a moment. SEALAND do not use the same tugs as we do. They use McAllister. I doubt it is 7A; that is a Moran channel. I think it is 13.

Q Channel 13 at this time was for navigational information?

A But tugs frequently use it. According to the rules, you are not supposed to, but sometimes they are on there.

MR. BARRA: Excuse me.

(Whereupon, a brief recess was taken.)

Q Captain, referring to the PONCE DE LEON, how much room do you need to turn 90 degrees, change your heading 90 degrees?

A This would depend on your speed.

Q Referring to the trial trip report, Plaintiff's Exhibit 9, on the trial test there was an advance of 2,000 and transverse of 813 feet, which I assume was done at full speed?

A Right.

Q At 10 knots or so at half a head, do you need more or less room than that to turn?

A The slower you are going, the more room you would need to turn.

Q When you first learned that the WILMINGTON GETTY was anchored, you had a distance of half a mile from her, approximately?

A Right.

Q That is 3,000 feet?

A Right.

Q What was your compass heading at that time, do you know?

A I don't know, really.

Q This is about three minutes before collision.

A We were constantly coming right, at this point. The compass heading would be changing all the time.

Q Prior, on your initial turn at 1311, shortly after passing Buoy 18, you do not recall what rudder you used?

A I would say it was either 20 degrees right or hard right.

Q At that point?

A Yes.

Q Later on, I understand, on visually sighting the WILMINGTON GETTY, you went hard right?

A That is right.

Q You had not been hard right before that, I

believe?

A This is the best of my recollection, it was probably 15 to 20 degrees right, which would be what it takes to turn the vessel at slow speed.

Q You are doing 10 knots? I refer you back to the calculations, whether going nine and a half knots or 11 knots, it is not slow speed. We could take, as Mr. Barra suggested, 30 seconds either way, to add or subtract and --

MR. BARRA: Are we asking the Captain what his recollection of the rudder --

MR. BOWLES: He mentioned slow speed.

MR. BARRA: Are you asking about his recollection?

MR. BOWLES: I am talking about speed.

Q Let's say you are doing 10 knots, Captain. According to all of your calculations, at the time you commenced your turn, is that correct, or according to the calculations --

A According to these calculations?

Q Your estimate differs somewhat from that, and we are talking about the times and distances fixed on the chart.

A The distances on the chart?

Q If at that time, at 1311, which is three minutes before the collision, you commenced coming right and just about that --

MR. BARRA: Excuse me. That is not the testimony.

MR. BOWLES: I wish you would stop interferring. I am trying to conduct my examination.

MR. BARRA: You are summarizing what is not his testimony. He was coming right after passing Buoy 18 at 1309.

MR. BOWLES: He has got a course in the bell book at 1311 which says 010, which was the first indication given to the helmsman.

Q Is that correct?

A Correct.

Q That is three minutes before collision, you commenced turning right?

A Right.

Q And very shortly thereafter you learned the WILMINGTON GETTY was anchored, is that correct?

A Yes.

Q Suppose you immediately reversed rudder to hard left, couldn't you turn left parallel to the channel course to --

A I would not say so.

Q -- half a mile from the WILMINGTON GETTY? You didn't have enough room?

A The fact is it was a slight flood tide.

Q Half a knot?

A And I had already had the ship swinging to the right. At that point to give a left rudder would take a considerable amount of time.

Q How much time would it take to go from hard right to hard left? How long does that take?

A I couldn't give an accurate estimate.

Q Is that in your sea trial report?

A I wasn't on the sea trial.

Q Are you going to argue with the sea trials?

A No.

Q What is that time? Let's see if they have that time there.

Is there any estimate as to the time it would take to shift rudder 35 left to 35 right?

A The time it would take to shift the rudder or that the ship would answer?

Q To shift the rudder.

A That can be done in a matter of seconds.

Q The sea trial report, Page 19, one test

shows 22 seconds, another test shows 27 seconds. Is that about right, less than half a minute?

A If -- as I said, I won't argue with the statistics there.

MR. BARRA: May we look at it?

MR. BOWLES: Sure (handing).

MR. BARRA: Referring to the data on Page 19?

MR. BOWLES: Yes, and the extreme left-hand column.

MR. BARRA: Off the record.

(Discussion held off the record.)

Q Do you have any question with respect to the data that the time it would take to change the rudder from extreme left to extreme right is less than half a minute? Is that correct?

A I would say so.

Q If you were only at 15 degrees right, and going all the way to the left, that would take even less time than to go from full left to full right?

A Full right to full left -- yes.

MR. BARRA: Off the record.

(Discussion held off the record.)

Q Captain, referring to the course recorder tape, Plaintiff's Exhibit 7, are the times on this tape

accurate, do you know?

A I would say so, yes.

Q At 1300 hours here, your vessel is apparently steady on a heading of about 345, is that correct, for approximately eight or nine minutes?

A Right.

Q Then you commence a right swing passing north and coming to the other side now and continuing a right swing over to approximately 035 degrees at 1312 or 13 hours, reaching the farthest right extremity, is that correct?

A Right.

Q Then you came back to the left to approximately a heading of 020?

A Yes; that's right.

Q And you made a change from 35 back to 20 in how long a period of time, approximately, here?

A 35 to 20 -- is this what you are speaking of?

Q This is your heading at 35 and the time is approximately 1312 or 1313.

A Yes, right.

Q And then you came back to the left to a heading and steadied out -- rather, not steadied out, but a heading of 020 a minute or two later?

A That appears to be. You say a minute?

Q You were able to change your heading, were you not, on a right swing and at some point you ordered hard left, I believe, is that correct?

A Right.

Q Just before the collision?

A Very shortly before the collision.

Q You were able to change your heading before the collision?

A Yes.

Q What would indicate your collision heading here?

A Well, we'd have to-- this would indicate -- let me see, collision was about 1314 -- that would be right.

Q This is 1310.

1310 is the red line right here (indicating).

A 1310 -- so that would be about -- collision would be about there, 1314.

Q That is much after 1314.

A Here is --

Q Halfway between those would be 15 -- some 14.

A Right. This is very difficult for me to say. I was not at this point. I had the GETTY in sight and I

was not interested in the compass heading.

Q According to your course recorder tape, what is your compass heading at 1314 hours, approximately?

A It would be something over 020 -- each one of these is 20 -- 20, 40, 60.

Q Right.

A Say 025, something like that.

Q In other words, at the time of sighting the GETTY, your vessel was swinging to the right?

A Right.

Q And in less than a minute you were able to swing your vessel somewhat to the left before collision?

A Right.

Q Is that correct?

A Right.

Q You reached a heading of 035 and were able to swing your buoy to the left and your stern to the right somewhat in less than a minute?

A Yes, I did, using the engine -- it wasn't using the same engine speed. I was on a steady slow and the Coast Guard testimony, I think, covers that, where I gave her a kick on the engines to avoid collision.

Q Suppose we go back to the point where you

were a half mile from the WILMINGTON GETTY and you had just commenced turning to the right; you were still on half ahead or had just reduced to dead slow at that time, and you have three minutes and a half mile.

My question to you is, couldn't you have, by simply going full left and going half ahead and coming left, come back up the channel without collision with the WILMINGTON GETTY?

A I was afraid to do that. It was my judgment this would have been a very dangerous maneuver.

Q Instead you continued going to the right toward the WILMINGTON GETTY?

A Yes.

Q Getting closer to her?

A I, at this point, I didn't have her in sight. I was still on radar.

Q You had her distance on the radar?

A Yes.

Q You had the direction from your own radar?

A Right.

Q If you continued going to the right to go past the WILMINGTON GETTY, unless you turned back to the left at some point, you would run aground at Nortons Point?

A Right.

Q You had two maneuvers. If you continued to the right, you had to go back to the left at some point to avoid going aground?

A Yes, I wouldn't have held course with the engine speed that we had. I would have been -- well, looking at the chart here, we might or might not have gone aground.

Q My point is, wouldn't it have been better to have gone left sooner, than attempted to pass outside of the WILMINGTON GETTY?

A No. I will repeat the previous statement that I made here on the radar configuration. That radar on the PONCE DE LEON or any other merchant vessel doesn't show the configuration of a target. It shows a target. It doesn't show whether it is this way or this way (indicating) and this point entered into my mind and, perhaps, she may be heading more or less at me or athwart ship -- that is athwart the channel. The tide was changing and I didn't know the exact position, configuration-wise of the GETTY:

Q You did not know whether she was athwart the channel or lined up with the channel, is that correct?

A That is correct.

Q Notwithstanding that, you continued turning right, toward her?

A Right.

Q If you continued up the channel, you would have passed 375 yards more from her instead of turning right, at this point, where you did? Had you continued up the channel you would have passed 375 yards from her, at least?

A Right.

MR. BOWLES: No further questions.

RE-CROSS EXAMINATION

BY MR. BARRA:

Q You mentioned on re-direct by Mr. Bowles, that when you were talking to the Moran tugs you switched to Channel 7A.

A Yes.

Q Can you tell us approximately what time that was?

A That was well before Buoy 18; I would say way back -- a half an hour before reaching Buoy 18.

Q Then after your communication with them, did you switch back to Channel 13?

A Yes.

Q Did you remain on Channel 13 until the point of collision?

A Right.

Q Captain, I would like you to refer to the course recorder tape, marked Plaintiff's Exhibit 7, and I wonder if you can tell me, by a review of this, when your vessel began to come right, and this is in the area of 1310, when you are in the area of Buoy 18, specifically?

A This is when we came to 010, as we determined (indicating).

MR. BARRA: Off the record.

(Discussion held off the record.)

Q This is 1310 on the course recorder tape, and this is what I am referring to, and if you can tell me from the tape when the vessel began swinging right?

A Yes, I would say about 1309 -- 1308 or 1309, according to this.

Q And this is just about the possible position, as you testified, that you came abeam of Buoy 18?

A Right.

Q You started to swing right, at that point? I just want to clarify that.

A Right.

Q Captain, I would like to refer you to your Coast Guard report, marked Exhibit 8, and ask you if you can tell me on Item 18, which says: "Location of casualty", what that states on there.

A ".7" "Location of casualty .7 of a mile. Bearing 255 from Coney Island lighthouse, Nortons Point..."

Q I wonder if you can measure --

A I do not have the parallel rulers.

Q If we can just roughly approximate again, the same thing that we did. We will place the pad down and draw a line along the right edge of the channel and if we can for the sake of time --

A .7 of a mile.

Q .7 of a mile, which I believe you said was a radar bearing at the time and I wonder if you could just mark that position in pen, please, and put the letter A next to it, to clarify which is which.

A (Complying.)

Q Can you measure between Point A and the edge of the channel, and indicate how many yards that is. Is that about 230 yards, would you say?

A Yes, 230 yards.

Q So the point of collision could have been as close as 230 yards to the channel?

A Yes.

Q Captain, from your experience as a master and with your pilotage endorsement and the number of times you come in and out of New York Harbor, is it customary for vessels that are anchored in, shall we say, in other than normal anchorage areas, to issue security calls?

A There is a security call which is used to indicate an unusual or dangerous and potentially dangerous situation, consisting of the word "security" with the facts to follow.

Q What is the reason for this type of security call that is customarily given?

A This is to acquaint other vessels of a potentially dangerous situation and tell them to be on the lookout, what to expect and so forth.

Q In other words, if a vessel is in a situation or position which is other than customary?

A Yes.

Q Did you hear any security calls from the WILMINGTON GETTY on May 10, 1973?

A No, I did not.

Q Captain, Mr. Bowles asked you some questions, in referring to the trial runs of the PONCE DE

LEON. Were you present when the trial runs were made?

A No, I was not.

Q Are you familiar, from your experience of being a master aboard her, of her turning characteristics at various speeds?

A Yes.

Q Can you tell me just, generally, does it take longer for a vessel to turn back from let's say 15 or 30 degrees right rudder to 15 or 30 degrees left rudder? Does it take longer at slower speeds?

A Yes.

MR. BOWLES: For the vessel or the rudder?

THE WITNESS: The vessel was the question.

MR. BOWLES: The rudder would be a shorter time

THE WITNESS: There would be no change in the rudder. The rudder would be the same.

Q To clarify, the rudder change, which is a mechanical maneuver of swinging of the wheel from left to right, this basically remains constant irrespective of speed and this takes a matter of seconds?

A Right.

Q But the actual movement of the vessel from a right turning heading to swing back to a left turning

would depend on the speed of the vessel?

A Right.

Q And the slower it is going, it would take longer for the head of the vessel to swing to the left?

A That is correct.

MR. BARRA: No further questions.

RE-DIRECT EXAMINATION

BY MR. BOWLES:

Q Referring to the issuance of security calls on radio, the fact that the WILMINGTON GETTY did not sound a security call telling you she was anchored here had nothing to do with the collision?

A It didn't contribute to the collision itself.

Q You intended to turn out of the channel in any event toward her?

A I intended to anchor in Gravesend Bay, in any event.

Q You knew she was there. This was not some hidden vessel. You could see her on radar.

A Yes.

Q You knew she was off Nortons Point?

A After I talked to her.

Q Even before that you saw her on radar even before that. You knew there was a vessel there that

that you had to contend with?

A Right.

Q And if she was stationary, it was your duty alone to avoid collision, not hers?

MR. BARRA: I will object to the question.

Q Isn't that correct, Captain, if she is stationary, she cannot help you avoid collision?

A As I say, this -- at this point when I first was going on radar, I didn't know she was at anchor. If she was in fact underway, it wouldn't have been my duty alone to avoid collision.

Q If she is at anchor, it was your duty alone to avoid collision?

A No question.

Q There is nothing she could do to avoid collision?

A No question about it.

Q You arrived at this Buoy 18 at 1309 and prior to arriving at Buoy 18 it was your intention, was it not, to go into the Gravesend anchorage?

A Yes.

RE-CROSS EXAMINATION

BY MR. BARRA:

Q I just want to clarify this one point.

If the WILMINGTON GETTY were giving security calls and you knew she were at anchor, what procedure would you have followed or would you have followed the same procedure? This is coming up to Buoy 18.

A I doubt that I would have turned at that point.

Q What would you have done?

A I believe I would have proceeded straight up the channel on course and then turned outside of her, it still being my intention of going to Gravensend -- I would have passed on the outside of her knowing she had no maneuverability.

Q So in other words the seven or eight or nine minutes prior to the collision, proceeding up Ambrose Channel, if you had heard a security call, that a vessel was at anchor off Nortons Point, this would have changed your assessment of the situation as to what maneuvers you did take?

A Yes, it would have helped me immeasurably.

RE-DIRECT EXAMINATION

BY MR. BOWLES:

Q You had your radar available and knew she was either stationary or moving very slowly, isn't that correct?

A Correct.

Q And notwithstanding those two possibilities, you still moved out of the channel toward her?

A Right.

MR. BOWLES: No further questions.

(Whereupon, at 1:30 p.m., the within examination was concluded.)

_____

Roger J. Meade

Subscribed and sworn to before me this_____ day of_____ 1974.

_____

oOo

# I N D E X

| Witness | Direct | Cross | Re-Direct | Re-Cross |
|---|---|---|---|---|
| Roger J. Meade | 3 | 52 | 74<br>99<br>101 | 94<br>100 |

oOo

# E X H I B I T S

| Plaintiff's For Identification | | Page |
|---|---|---|
| 1 | Notice of Deposition | 3 |
| 2 | Rough bridge log book for May 10, 1973 | 3 |
| 3 | Rough engine log book page ending noon on May 10, 1973 | 4 |
| 3-A | (Deemed) Page of rough engine log book commencing May 10, 1973 | 4 |
| 4 | Bridge bell book | 4 |
| 5 | Engine bell book | 4 |
| 6 | Chart No. CS369 | 5 |
| 7 | Gyro course recorder tape of the PONCE DE LEON | 6 |
| 8 | Coast Guard report | 7 |

oOo

STATE OF NEW YORK )
) ss:
COUNTY OF NEW YORK )

I, ROBERT ZERKIN, Commissioner of Deeds of the City of New York, do hereby certify that the foregoing deposition of ROGER J. MEADE was taken before me on the 8th day of August, 1974.

The said witness was duly sworn before the commencement of his testimony; that the said testimony was taken stenographically by myself and then transcribed.

The within transcript is a true record of the said deposition.

I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

In witness whereof, I have hereunto set my hand and seal of office at the County and State of New York, this 21 day of August, 1974.

Robert Zerkin

Robert Zerkin
ROBERT ZERKIN
COMMISSIONER OF DEEDS
CITY OF NEW YORK 4-1381
Certificate filed in New York County
Commission Expires June 4, 19[illegible]

354

USA 33s - 475 PLAINTIFF
(ED. 4-[illegible])
~~DEFENDANT~~

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

28-Jil

EPI-M1—4-8-74-30M-2001

Transcript of Coast Guard
Testimony of Joseph Potocka,
Chief Officer of the
PONCE DE LEON

Ponce's C/O on bridge

Re: Collision between PONCE DE LEON
AND WILMINGTON GETTY, on 10 May 1973

Battery Park Building
New York, N.Y. 10004

17 May 1973

P R E S E N T:

D. E. COLE, LT, USCG, Investigating Officer

Joseph Patocka - Witness
Julio S. Rodriguez - Witness

Pat J. Castello - Court Reporter

INVESTIGATING OFFICER: Let the record show that this investigation is being conducted at the Marine Inspection Office, New York, New York, on 17 May 1973. The time is 3:55. This statement is being taken from Joseph Patocka, License number 383508 and is convened under the authority of R. S. 4450, as amended, 46 U. S. Code 239 and the regulations promulgated thereunder to investigate the collision between the S.S. WILMINGTON GETTY and the S.S. PONCE de LEON. This investigation is intended to determine if there is any evidence of incompetence, misconduct, unskillfulness or willful violation of the law on the part of any person or licensed officer involved. All witnesses will be examined under oath. A witness is subject to the federal penalties for perjury and making false statements under 18 USC 1001. I am going to ask you to be sworn. Do you have any objection to this?

79790

MR. PATOCKA: None whatsoever.

MR. JOSEPH PATOCKA, was called as a witness by the Investigating Officer, was sworn, and testified as follows:

INVESTIGATING OFFICER: I must first warn you of the following. I want you to understand that you have a constitutional right to refuse to answer any of my questions. Do you understand that?

MR. PATOCKA; Yes.

INVESTIGATING OFFICER: You also have the absolute right to remain silent and if you choose to answer any questions any statement you make can be used against you. Do you understand that?

MR. PATOCKA: I do.

BY THE INVESTIGATING OFFICER:

Q Will you please state your full name and address?

A Joseph Patocka, RD 5, Box 112, Flemington, New Jersey .

Q And what is your occupation?

A Merchant seaman and at the present time chief mate on the PONCE DE LEON.

Q How long have you been going to sea?

A Since 1930.

Q What licenses or documents do you hold issued by the United States Coast Guard?

MR. PATOCKA

A Z Card and Master's license, unlimited.

Q Any ocean, any tonnage?

A Any ocean, any tonnage.

Q Do you have any pilotage on that?

A No pilotage.

Q Were you serving aboard the S.S. PONCE DE LEON on May 10, 1973?

A I was.

Q And what were your duties?

A I was chief officer.

Q Could you briefly describe the incident involving these two ships on that date?

A Yes. I was on the starboard wing of the bridge and out of the fog wass the bow of the WILMINGTON GETTY off our port side. A few minutes after that we sideswiped against the bow of the WILMINGTON GETTY after sighting her.

Q Did you estimate how far, how many points off the port bow?

A When we first sighted her?

Q Yes.

A I'd say our stem of our ship might have been about 25 feet away from her bow.

Q 25 feet?

A Well, it's 25 to a 100 feet.

MR. PATOCKA

Q How many points off the ship's head?

A I'd say about 6 points.

Q Were you standing the watch at the time of the collision?

A I was assisting the master on the bridge.

Q Who was navigating the vessel?

A The master was conning the courses.

Q Were you observing any of the radar sets at the time?

A At the time of the collision?

Q Or prior to the collision.

A Off and on I was, yes.

Q I see. Which radar set were you observing?

A I was observing the Decca.

Q At what point did you become aware of the WILMINGTON GETTY?

A When I first sighted her out of the fog.

Q I see. Did you watch the radar at any time between the course change off buoy 18 until the time of the collision?

A No, sir.

Q Was anyone observing the radar set at that time?

A I believe Mr. Benson the third mate was there.

Q Do you have any recollection of radio communications between the two ships?

A No, I don't.

Q Was your ship sounding fog signals?

A Yes, sir.

Q What were there?

A A short blast every minute.

Q Did you have your vessel's running lights on?

A Yes, sir.

Q Do you remember hearing any signals or any sounds?

A Yes.

Q What did you hear?

A About three to four minutes before the collision I heard a faint ship's bell.

Q Did you report this to the master?

A Yes, sir.

Q What was his response?

A At that point I was on the starboard wing of the bridge and the ship is 92 feet abeam, and I ran from the starboard side to the port side of the wheelhouse to report to the master who happened to be outside at the time and he gave an order of right helm.

Q How much right rudder did he order?

A I believe it was 20 degrees or hard right, because I ran back to the starboard side again to listen if I could hear the bell again.

MR. PATOCKA

Q How soon after the master gave the order of right 20 degrees rudder or hard right rudder did the collision take place?

A I'd say about 4 minutes, 4 to 5 minutes.

Q What was the vessel's speed when you heard the bell?

A The PONCE DE LEON's speed. I would estimate about 2 knots.

Q Do you have any idea of where the PONCE DE LEON was when you heard the faint bell?

A We were out of Ambrose Channel past buoy 18.

Q You had already past buoy 18?

A That's correct, sir.

Q From there on you had no indication --

A I was outside. I was listening.

Q Was this ever reported to the bridge by the bow? Did they report hearing anything?

A If they did it was probably reported by telephone but like I say, I was outside and the 3rd mate has got the radar on his right side and the telephone on his left and he could just pick up the phone without doing any maneuvering.

Q So you were outside on the bridge from the time the vessel made its turn at buoy 18 to the time of the collision?

MR. PATOCKA

A That is correct.

Q Except for when you passed through to tell the master you heard the bell?

A I didn't pass through the wheelhouse. I went out the front of the wheelhouse. You don't have to go through the wheelhouse on that ship to go from port to starboard.

Q What was -- what helm orders or what engine orders were given when it became obvious to you, to the bridge, that a risk of collision existed? By that I mean when the WILMINGTON GETTY was sighted visually.

A Well, there was the right helm order, and as far as engine bells I do not know. Like I say, I was outside all the time. What bells were given to the engine room I do not know.

Q Do you have any knowledge of the 3rd officer reporting this contact to the master?

A I do not.

Q Did you see any lights or anchor balls on the WILMINGTON GETTY?

A Truthfully I cannot say, because when I seen that bow of that ship loom out of the fog, seen the anchor chain and we're drifting down on her I didn't look for any lights or anchor ball. I was mostly concerned with what's going to happen.

MR. PATOCKA

Q Did you notice any personnel on the bow of the tanker?

A I did not.

Q You stated that the master gave a right rudder command three to four minutes prior to the collision. Did he take this rudder off at any time that you were aware of?

A No, I'm not aware of that, any further orders from the master as to the rudder orders on that ship. I was outside when he gave the rudder orders and I was on the other side of the wheelhouse. I could hear him. I was on the other side of the wheelhouse.

Q At what time did you come up to the bridge?

A About 11:30 or 11:15 that morning.

Q What is your best recollection of the time of the collision?

A About 1314 hours.

Q Let me ask this question again. The only one that was actually observing the radar in the wheelhouse was the 3rd mate?

A And the master.

Q And the master. At what time had the anchor detail been called out?

A I got it in my notebook when I called the boatswain out and the second mate. I didn't bring the note-

book with me but I called out well before we got to Ambrose Light.

Q Before Ambrose Light?

A Yes,sir.

Q What were the state of the anchors at the time of the collision, do you know?

A The starboard anchor was howed out.

Q Who was on the wheel?

A A fellow by the name Blanco, AB.

Q Are you familiar with his experience?

A He's an experienced man.

INVESTIGATING OFFICER: All right, fine, Mr. Patocka. That's about all the questions I have at this time. We'll have this typed up approximately Tuesday for your signature. Will you be in the area to sign it?

MR. PATOCKA: Yes, sir.

INVESTIGATING OFFICER: How can we get in touch with you?

MR. PATOCKA: I can come into New York.

(There being no further questions the witness was excused and withdrew from the board room.)

Joseph Patocka
JOSEPH PATOCKA

Subscribed and sworn to before me this 22nd day of May 1973.

David E Cole
DAVID E. COLE
LT, USCG
United States Coast Guard
Investigating Officer

365

USA 33s - 475
(ED. [illegible]) PLAINTIFF

[redacted]

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

29-fil

FPI-NI—4-8-74-30M-2001

Transcript of Coast Guard
Testimony of William J. Benson,
Third Mate and Watch Officer
of the PONCE DE LEON

Ponce's W/O (3/O) on bridge

366

Re: Collision between PONCE DE LEON and WILMINGTON GETTY, on 10 May 1973

Battery Park Building
New York, N.Y. 10004

21 May 1973

PRESENT:

D. E. Cole, LT, USCG, Investigating Officer

William J. Benson, Witness

I. J. Sobel, Reporter

---

INVESTIGATING OFFICER: Let the record show that this investigation is being conducted at the Marine Inspection Office, New York, New York on 21 May 1973. The time is 10:45. This statement is being taken from Mr. William J. Benson, Z-Number 746578, and is convened under the authority of R. S. 4450, as amended, 46 U.S. Code 239, and the regulations promulgated thereunder, to investigate the collision between the WILMINGTON GETTY and PONCE DE LEON. This investigation is intended to determine if there is any evidence of incompetence, misconduct, unskillfulness or willful violation of the law on the part of any person or licensed officer involved. All witnesses will be examined under oath. A witness is subject to the Federal penalties for perjury and for making false statements under 18 U. S. Code 1001. -- I'm going to ask you to stand and be sworn. Do you have any objection to this, Mr. Benson?

MR. BENSON: No, I don't.



190

MR. BENSON

W I L L I A M J. B E N S O N, being first duly sworn, testified as follows:

BY THE INVESTIGATING OFFICER:

Q I must first warn you of the following: I want you to understand that you have a constitutional right to refuse to answer any of my questions. Do you understand that?

A Yes.

Q You also have the absolute right to remain silent, and if you choose to answer any questions any statements you make can be used against you. Do you understand that?

A Yes.

Q All right, Mr. Benson, will you state your full name and address?

A William J. Benson, 1407 East Shore Drive, Brigantine, New Jersey.

Q What is your occupation?

A Merchant seaman.

Q How long have you been going to sea?

A Since I've been 17.

Q And that's how many years?

A I'm 44 now.

Q Okay. What licenses or documents, if any, do you hold issued by the Coast Guard?

A Chief mate, oceans.

Q Oceans. Any tonnage?

A Any tonnage.

Q Any pilotage on there?

A No pilotage.

Q Were you serving aboard the SS PONDE DE LEON on May 10, 1973?

A Yes.

Q What were your duties?

A Third officer on watch.

Q Would you give me a description, please, of what happened involving this collision as you saw it?

A The collision occurred directly off Norton Point. The first we could visually observe of the tanker when it was approximately 50 to 100 feet off the port bow. We were at a very slow speed in the water. We are coming right, with a fair tide.

Q Okay. How many points off the port bow when you first noticed --

A Visually or --

Q Visually.

A Approximately five points, or five degrees rather.

Q All right. How long had you had the WILMINGTON GETTY on the radar?

A The first I had observed it it was approximately

six tenths of a mile on the radar.

Q What made you take notice of it?

A I noticed the ship that was proceeding in ahead of us pull away from it on the radar target. In other words the other ship had blended in with this target. The two had become one.

Q Which radar were you observing?

A Three centimeter.

Q Did you have any other radar on the bridge?

A Yes, sir; ten centimeter the captain uses.

Q Where were you when you first noticed it?

A I was standing by the telegraph -- when I first noticed I was looking in the radar, that was my job. Every chance I got I looked in the radar. And I made note of this to the captain when I first noticed that I see this other target pulling out, we have a ship right there.

Q That was about six tenths of a mile from the collision point?

A From where the vessel was on the radar.

Q Where was your vessel when you noticed it? Was it alongside Buoy 18 or further back down the channel, or had you passed Buoy 18?

A We were toward the Narrows Bridge -- towards Norton's Point. Buoy 18, we had passed that.

Q What was the captain's reaction to this information?

A He used the radio on 13 to contact this ship to verify that it was at anchor there, and informed them that he was coming right to pass inside of them at Norton Point.

Q Did they acknowledge that transmission?

A They acknowledged it.

Q Did they repeat anything after that?

A No.

Q So your vessel initiated the call up --

A Right.

Q -- radio transmission. What was your speed? Could you estimate your speed at the time of the collision?

A Couldn't have been over a mile an hour.

Q How about when you passed Buoy 18, what was your speed?

A Not much more than that; maybe a mile and a half.

Q What was the speed coming down the channel?

A Maybe six knots; five knots.

Q In the bellbook it states that you were close aboard Buoy 18 at 1309. Is that correct?

A Yes, I made that notation.

Q And the time of collision is noted as 1314. Is that right?

A That's the time of contact.

MR. BENSON

Q That's five minutes.

A Yes.

Q It's approximately a mile from Buoy 18 to the impact of the collision, approximately nine-tenths of a mile. That would put the speed in excess of one knot.

A Well, we had a fair current; it could have been assisting.

Q Is it possible the vessel could have been going about 11 knots?

A No, not to my estimation.

Q Did you hear any signals or any sounds from the WILMINGTON GETTY or do you know of any being reported?

A Yes, we heard the anchor bell.

Q You heard the anchor bell of the WILMINGTON GETTY?

A Yes, just before contact. We knew it was ahead anyway.

Q When the captain became aware that this contact was ahead of him what helm orders did he give?

A 20 degrees right rudder and, almost immediately after that, hard right.

Q I see. Was this visibility at the time approximat ly 50 to 100 feet from the front of the bow, considering the length of your vessel and the bridge?

A At the time of contact?

Q Yes, what would you say the total visibility was?

A I'd say 100 feet over the bow -- maybe 75 feet. The fog was wispy and as we were coming in we were picking up the buoys visually and we missed one or two because it was patchy. The fog was just about clearing, and we hit the last -- after we passed 18 -- I didn't see 18, I heard it, I knew it was there. We just hit one of the thick patches before it cleared because immediately after the collision, about five minutes after, the fog was clear, you could see the buoys at Norton Point and everything.

Q Did you feel that when your vessel passed Buoy 18 and you altered course for the anchorage that your vessel would clear the anchored vessel?

A I knew it was going to be close. I felt we could clear. But with a fair tide coming right it was hard to do; it was impossible to use more power on our ship to get the steerageway, and if you put more power the damage would have been in excess of what it was.

Q Was your vessel sounding fog signals?

A Yes.

Q Were your lights on?

A Pardon?

Q Were your running lights on?

A Yes.

MR. BENSON

Q What course had been set when you passed Buoy 18?

A I think it was 350 or something like that.

Q And then to go into the anchorage, 350?

A I made a notation, I think, in the bellbook; I'm not sure.

Q Yes, the bellbook indicates 010.

A That's what I meant, but I wasn't positive.

Q Where was the chief mate during all this?

A He was on the bridge wing. I think he was on the port bridge wing. I wasn't too concerned with his location. He was in contact with the second mate on the bow with a radio.

Q Did you receive any reports from the bow?

A Yes, from the second mate.

Q What did he report?

A He seen the ship, and as soon as he seen it he called me and screamed "Hard right", which was everyone on the bridge's immediate reaction. At that time I look up from the front and I seen it,while I picked up the phone I was still looking, and I might have looked down and picked up the phone and I seen the ship, and he screamed "Hard right", and I screamed "Hard right", and the captain screamed "Hard right", but we didn't have enough way on to really maneuver the ship as she should have responded, and if we used more power at that particular time the impact would have been greater, I believe; and with a

fair tide you know, hindering our stern from coming to the right, that's why we had to give the hard left order immediately after the hard right; midships and then hard left. The tide didn't help at all in maneuvering the ship.

Q All right, Mr. Benson. I have a chart here and I'd like you to indicate the approximate position of the WILMINGTON GETTY at the time of the collision.

A This is from my radar picture as far as I can recollect.

Q From your radar picture -- . And I would like as best you can if you could indicate the vessel's course up the channel as best you can remember it.

A You want me to draw that in?

Q Yes.

A Do I have to use bearings? I wasn't taking any.

Q No, just to the best of your knowledge and what you can remember.

A Our ship came alongside 18, like this (indicating), about clearing it at this position here (indicating), and we were coming to the right slowly all the time; 347, 350. I'd say we came in like this (indicating), and coming up on Norton's Point. -- This is the way the ship was going and we straightened up afterwards.

Q Fine. You mentioned this other vessel which appeared

to give the radar contact the appearance of one. At what point did it?

A Right around here (indicating). Right around 18.

Q You had this single radar contact that you --

A Right.

Q Had you been following this contact down the channel?

A Yes, another ship was proceeding.

Q So did you see it when it blended?

A I didn't see it when it blended. I must have been -- run out on the bridge, but I was observing the radar every opportunity I got.

Q What scale did you have the radar on?

A The lowest scale; a mile and a half. It was picking up targets beautifully on that range.

Q So when your vessel is approximately here (indicating) the single contact, which was in this vicinity, split?

A I assume it was right here because the other target that we were following I noticed -- when I first noticed this it was pulling away from the other target. And when I noticed it was two targets and this is when I made a notation to the captain. I said "Captain, there's another vessel right in front of us", and he verified it was there, and he was going inside, passing inside of Norton Point and proceeding to the anchorage.

Q Where was your vessel when he was informed?

A I'd say right about here (indicating). Right about there (indicating).

Q Would you please initial this and date it?

A (Witness complies) -- The 21st, right?

Q Right. -- Mr. Benson, would you please indicate on there the position of the collision?

A The collision? I'd say right about there (indicating).

Q All right. This line then is your intended --

A That's where we were going. This was our ship, the way I figure our ship was going in there. This is where I figure our ship followed.

Q I see. So actually the WILMINGTON GETTY could have been anywhere in this area (indicating)?

A That's from my observation from noticing on the radar, I noticed at Norton Point and it's my radar picture. I still have it in my mind.

Q About how many minutes before the collision was this bell which you stated was the anchor signal of the WILMINGTON GETTY heard?

A I'd say a minute.

Q Who reported?

A I heard it.

Q You heard it. Did the chief mate report any bell to the master?

A They were in contact on the radio and I'm sure everything was -- everybody was informed. The second mate was informed of every bell and everything.

Q Did you notice any personnel on the bow of the WILMINGTON GETTY?

A Yes, I believe I noticed one or two people.

INVESTIGATING OFFICER: Fine, Mr. Benson. That's all the questions I have. We can have this typed up probably at the end of this week; definitely by Monday. Would you be in the vicinity to sign it or would you be in New York in the immediate future to sign it?

THE WITNESS: I don't have any reason to be in New York.

INVESTIGATING OFFICER: Would you waive your right to sign it?

THE WITNESS: Positively.

INVESTIGATING OFFICER: Fine. Let it show on the record that Mr. Benson has waived his right to sign this statement. I have nothing further. At this time I'd like to thank you for your cooperation.

THE WITNESS: Thank you.

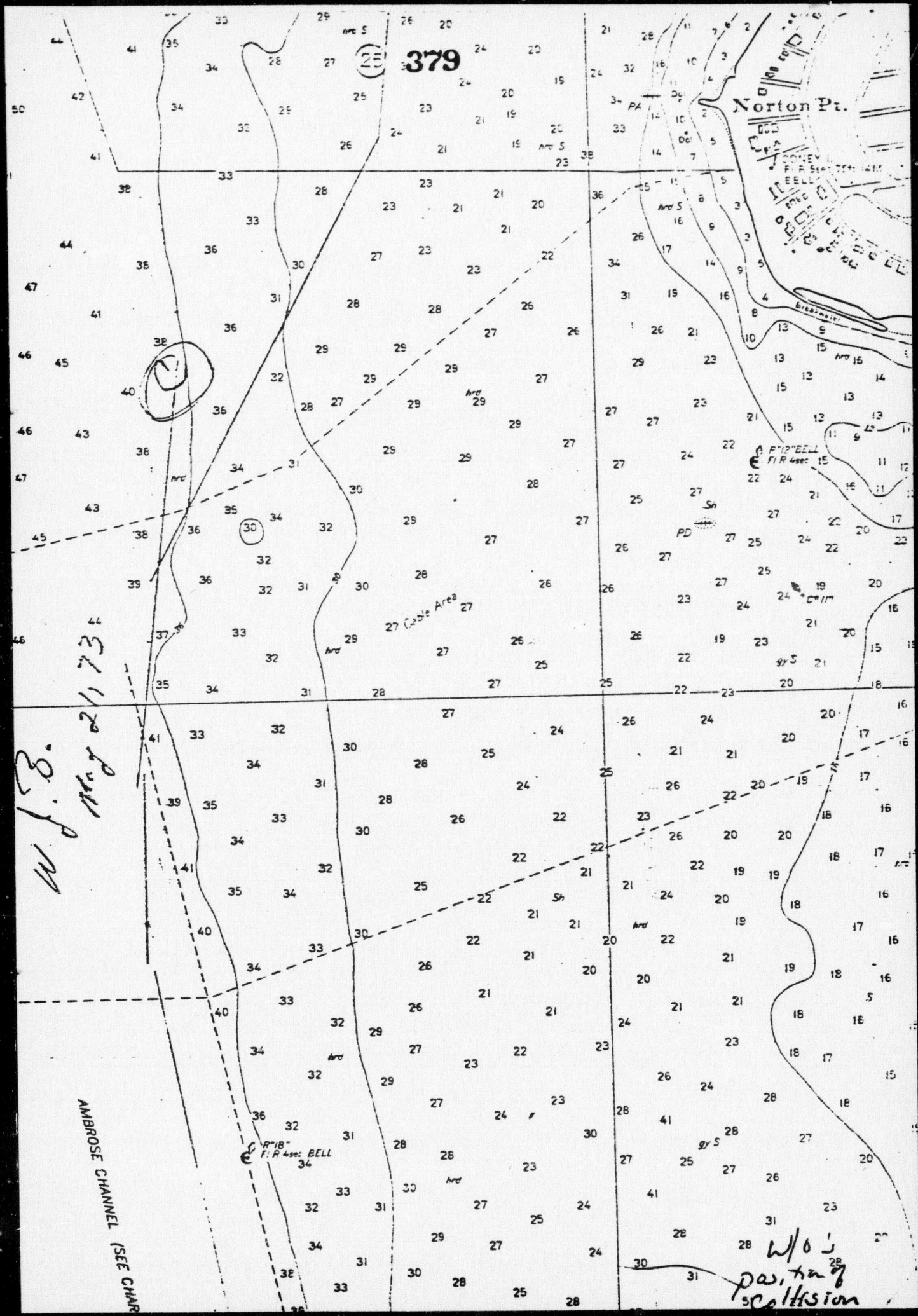
---

UNITED STATES OF AMERICA )
)
UNITED STATES COAST GUARD )
)
NEW YORK, NEW YORK )

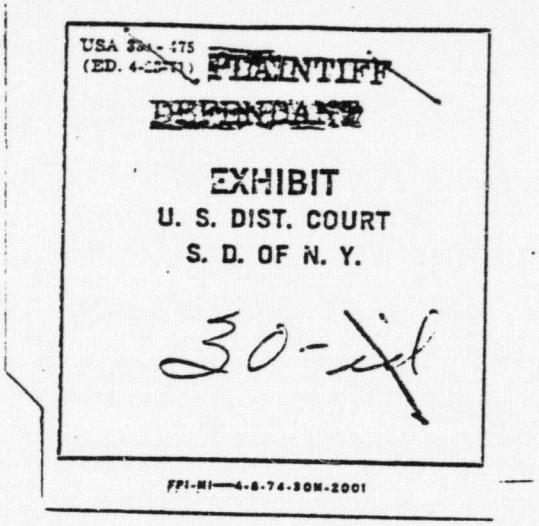
I, ISIDORE J. SOBEL, an officially designated and qualified Court Reporter of the United States Coast Guard, hereby certify that the foregoing proceedings were taken by me and transcribed by me, and is a true record of the testimony of the witness, and of the proceedings contained herein; further that there being no interest attached, either financially or by virtue of relationship with any party hereto, on my part.

Isidore J. Sobel

ISIDORE J. SOBEL, REPORTER


379
Norton Pt.
AMBROSE CHANNEL (SEE CHAR
R"18"
F.I.R 4sec BELL
R"12"BELL
F.I.R 4sec
Cable Area
W/O
Position
Collision

380




Transcript of Coast Guard
Testimony of Jose A. Ahorrio,
Second Officer of the
PONCE DE LEON

Ponce's 2/o on bow

Re: Collision between PONCE de LEON and WILMINGTON GETTY

Battery Park Building
New York, N.Y. 10004

17 May 1973

PRESENT:

D. E. COLE, LT, USCG, Investigating Officer

Jose A. Ahorrio, Witness

Charles Tota, Court Reporter

-/-

INVESTIGATING OFFICER: Let the record show that this investigation is being conducted at the Marine Inspection Office, New York, New York on 17 May 1973; the time is 3:40 p.m. This statement is being taken from Jose Ahorrio, License Number 413612 and is convened under the authority of R. S. 4450, as amended, 46 U. S. Code 239 and the regulations promulgated thereunder to investigate the collision between the WILMINGTON GETTY and the PONCE de LEON. This investigation is intended to determine if there is any evidence of incompetence, misconduct, unskillfulness, or wilful violation of the law on the part of any person or licensed officer involved. All witnesses will be examined under oath. A witness is subject to the Federal penalties for perjury and making false statements under 18 U. S. Code 1001. I am going to ask you to stand and be sworn. Do you have any objection to this?

WITNESS: No sir.

JOSE A. AHORRIO, being first duly sworn, testified as follows:

19790

BY THE INVESTIGATING OFFICER:

Q I must first warn you of the following: I want you to understand that you have a constitutional right to refuse to answer any of my questions. Do you understand that?

A Yes sir.

Q You also have the absolute right to remain silent and if you choose to answer any questions any statements you make can be used against you. Do you understand that?

A Yes sir.

Q Please state your full name and address?

A Jose A. Ahorrio, P. O. Box 3501, Old San Juan, P. R.

Q And what is your occupation?

A Seaman.

Q How long have you been going to sea?

A Over 25 years.

Q What licenses or documents do you hold issued by the U. S. Coast Guard?

A A master's license.

Q What waters?

A Any oceans, any gross tons.

Q Do you hold any pilotage?

A No pilotage.

Q Were you serving aboard the SS PONCE de LEON on May 10, 1973?

A Yes sir.

Q What were your duties?

A Second mate.

Q Could you describe any unusual incident involving that ship on that date, specifi cally the collision with the WILMINGTON GETTY?

A I went to the bow of the ship at 11 o'clock to standby the anchor and stayed on my post going through the Ambrose Channel until relieved at a later time by third officer, Joseph Schecter (phonetic). I came back a half hour later to resume my duties as anchor watch.

Q You say as anchor watch, you mean, the man in charge of the anchor detail?

A Correct sir.

Q Then what happened?

A After reporting the last buoy, which the third officer on the bridge informed me was buoy number 18 - shortly thereafter I sighted a vessel or the bow of a vessel came into view about three points on my port bow. I reported immediately to the bridge and the third officer in the wheelhouse asked me how far she was and I told him she was almost next to us.

Q When did you notice the bow of the other vessel?

A When she was about 25 to 30 yards away, three points on the port bow. And then as the bow went by I kept her under observation and immediately I called up the bridge and informed them that our stern was getting too close to the other ship.

Q And then, the collision?

A Shortly thereafter, I felt a noise coming from our port side.

Q All right, fine.

A As though a grazing noise.

Q Fine. Who was with you on the anchor detail?

A The bosun and one able seaman.

Q What was the duty of the able seaman?

A The able seaman was on lookout.

Q Was he performing any other duties at the time of the collision?

A No sir.

Q Did you hear any sounds or signals from the other ship?

A Just before she approached us I heard the danger signal, four blasts.

Q Didn't hear any bell from the other vessel?

A Way before that I reported hearing bells.

Q What signals was your vessel sounding?

A We were blowing the whistle, one prolonged blast every minute.

Q Do you recall if your vessel was showing running lights?

A She was.

Q She was? What types of communication did you have with the bridge?

A A telephone.

Q Was this continually manned?

A Yes sir.

Q Who?

A I was.

Q Who was on the other end of the line?

A Excuse me?

Q Who was on the other end of the telephone line?

A The third officer, Mr. Benson.

Q Were you ever informed by the bridge that there was another vessel ahead?

A No sir.

Q Did you happen to notice anyone on the bow of the other vessel?

A I saw two men.

Q Do you recall the movement of your vessel from the time the WILMINGTON GETTY was sighted to after the collision? By that I mean, did you notice any change of heading shortly before the collision?

A No sir.

Q What would be your estimate sir, of the maximum visibility prior to the collision?

A I don't believe we could see more than 30 yards.

INVESTIGATING OFFICER: That's all the questions I have at this time. What we're going to do is have this typed up and make it ready for your signature. Will you be in the vicinity

around Monday or Tuesday?

MR. AHORRIO: Yes sir.

INVESTIGATING OFFICER: I see, fine. Then we can give you a call and you can come in and look it over and sign it. Could I have your telephone number?

MR. AHORRIO: You can call me at the office.

INVESTIGATING OFFICER: Your office number? Fine. All right. That's all I have. Thank you for your cooperation.

-/-

CT-7

MR. AHORRIO

I have read the answers given to the questions on the foregoing 6 pages and certify that they are correct.

_____
(Deponent)

Subscribed before me at
New York, New York, this
day of
1973.

_____
(Investigating Officer)

UNITED STATES OF AMERICA )
)
UNITED STATES COAST GUARD )
)
NEW YORK, NEW YORK )

I, CHARLES TOTA, an officially designated and qualified Court Reporter of the United States Coast Guard, do hereby certify that the foregoing testimony was taken by me and transcribed by me, and is a true record of the testimony herein contained; further, that there being no interest attached, either financially or by virtue of relationship with any party hereto, on my part.

Charles Tota

CHARLES TOTA

Def Ex. A

389

Re: Collision between PONCE de LEON and WILMINGTON GETTY

Battery Park Building
New York, N.Y. 10004

11 May 1973

PRESENT:

D. E. COLE, LT, USCG, Investigating Officer

Captain Jens Brixen - Witness

George Farago - Witness

George Wendelburg - Representing witnesses

Pat J. Castello - Reporter

INVESTIGATING OFFICER: Let the record show that this investigation is being conducted atthe Marine Inspection Office New York, New York, on May 11, 1973. The time is 2:10 p.m. This statement is being taken from Jens Brixen. His number is 530610 and it's convened under the authority of R. S. 4450, as amended, 46 U.S. Code 239 and the regulations promulgated thereunder to investigate the collision between the SS WILMINGTON GETTY and the SS PONCE de LEON. This investigation is intended to determine if there is any evidence of incompetence, misconduct, unskillfulness or willful violation of the law on the part of any person or licensed officer. All witnesses will be examined under oath. A witness is subject to the Federal panalties for perjury in making false statements under 18 USC 1001. I am going to ask you to stand and be sworn. Do you have any objection to this?

CAPTAIN BRIXEN: No, sir.

19790

BY THE INVESTIGATING OFFICER:

Q I must first warn you of the following. I want you to understand that you have a constitutional right to refuse to answer any of my questions. Do you understand that?

A I do.

Q You also have the absolute right to remain silent and if you choose to answer any questions, any statement that you do make can be used against you. Do you understand that?

A Right.

CAPTAIN JENS BRIXEN, being first duly sworn, testified as follows:

BY THE INVESTIGATING OFFICER:

Q Please state your full name and address.

A Jens G. Brixen, 9 Herbert Drive, New Castle, Delaware.

Q What is your occupation?

A Master of the WILMINGTON GETTY.

Q How long have you been going to sea, Captain?

A Since 1937.

Q What licenses or documents, if any, do you hold issued by the U. S. Coast Guard?

A Unlimited master, first class pilot, New York harbor and Delaware Bay.

pc-3 CAPTAIN BRIXEN

Q Were you serving aboard the SS WILMINGTON GETTY on 10 May 1973?

A Yes, sir.

Q What were your duties aboard her?

A Master of the vessel.

Q Would you please describe briefly, if you can, what exactly happened involving this collision between the GETTY and the PONCE de LEON?

A Can I read the statement? I have it all here.

Q Yes.

A "Vessel was at anchor 254 degrees, 1350 yards from Coney Island Light, 375 yards south of anchorage 25. It was nekessary to use this anchorage due to poor visibility and all adjacent anchorages being extremely congested. Vessel was on a heading of approximately 168 degrees true with 3rd Mate, G. Farago, License number 383903 on bridge and AB John Pancoast in bow ringing prescribed fog signal. Radar was in operation on three mile scale to check on vessel's position and traffie in nearby channel. At approximately 1308 an inbound vessel was observed on the radar apparently on a collision course after said vessel had passed Ambrose channel L/B "18". A call was out on UHF Channel 13 identifying this vessel and stating this vessel was at anchor. The approaching vessel identified herself as the PONCE de LEON and stated that he intended to pass inside this vessel. The PONCE de LEON transmission was acknowledged by this

vessel with the statement that this vessel is anchored being repeated. Shortly thereafter the PONCE de LEON was observed visually at approximately 200 yards close on the starboard bow crossing from starboard to port. The danger signal was sounded on the whistle at which time master came on the bridge immediately. At 1313 the PONCE de LEON struck this vessel a glancing blow on the bow with her port side caused, causing damage to the bow above the waterline. The general alarm was sounded immediately and the fire hoses forward manned and water applied immediately to the collision area to prevent fire. A call was transmitted on channel 13 that a collision had taken place in Gravesend Bay, but no assistance was requested or needed."

Q Fine. Thank you, Captain. Now what time did you anchor?

A All secured and -- all secured anchorage at 0900.

Q Why did you decide to anchor in that position?

A The decision to anchor in that position was because I could observe in the radar that all anchorages in the vicinity was extremely congested and no room apparently available and my intention was to clear this anchorageat the earliest opportunity when visibility improved and space could be found in any other anchorage. Maybe I should state that the intention was to proceed to Stapleton anchorage.

Q When did the fog clear?

A It cleared off and on -- I could not give the

exact time. It cleared for a while. We were able to check our radar observation bearing for a short while somewhere around 11:30. Then it set in again.

Q Did you notice any other vessels in that anchorage?

A I noticed a number of vessels in anchorage when it cleared and observed two, at least two which were Army dredges.

Q About what time did the collision occur?

A The collision occurred at 1313.

Q Who was on watch at the time of the collision?

A The third mate, Chief Farago.

Q Were there any other persons on the bridge with him?

A He was the only man on the bridge.

Q Who was on the bow at the time?

A John Pancoast, AB.

Q No one else?

A No, sir.

Q What would you say was the visibility at the time of the collision?

A Approximately two thousand yards -- two hundred yards..

Q Two hundred yards?

A Yes.

Q When did you become aware that a collision was imminent, when you heard the danger signal?

A When I heard the danger signal and seen the vessel.

Q When you arrived on the bridge, how far away was the PONCE de LEON?

A I would say maybe 50 yards.

Q So you never actually saw the PONCE de LEON on radar or had radio contact with her until after the collision?

A Personally the third mate had observed which is why he put out the call on channel 13.

Q Do you know if there was any plot being maintained on the PONCE de LEON?

A No, I do not. You mean from our vessel?

Q Yes.

A He was just being continually tracked on radar.

Q What signals were you sounding?

A Ringing of the fog bell.

Q How about a -- were you sounding a gong aft?

A No.

Q How long was the man in the bow ringing the bell?

A Just before the collision I would say thirty seconds. It was being sounded every time he heard approaching

vessel's whistle.

Q Did you have any anchor lights on?

A We had the anchor ball was up.

Q What was your alignment with the main ship channel?

A Could I look at my -- I had the ship's heading approximately here.

Q Yes, look at it.

A Approximately 168 degrees parallel to channel

Q Did you happen to hear any signals from the PONCE de LEON?

A I heard several fog signals.

Q From the PONCE de LEON?

A From the PONCE de LEON, yes.

Q Did you see any lights on her?

A I did not observe any lights on her.

Q Did you see any people on her bow?

A Personally I would not make a statement that I did see any people. I believe there were people in the bow but they -- I observed people on the bridge of the vessel.

Q Did you happen to notice whether she had her anchors hawsed or not?

A I believe the anchors were hawsed.

Q Do you have any estimate of her speed when you came up on the bridge and as she went by?

A My best estimate would be between 6 and 8 knots.

Q Immediately after the collision, did you check the radar scope or anything like that? Did you happen to notice if there were other vessels in that vicinity?

A They had already been observed in the vicinity by the third mate, and when I looked -- there had already been several vessels on the scope apparently outbound.

Q Outbound?

A Outbound, yes.

Q Do you know of any other vessels that might have been proceeding into the harbor after the collision?

A Not at the immediate time before or after the collision. There was constant traffic in the channel and exactly I could not state that.

Q Could you estimate the number of contacts, radar contacts that were in the area? You mentioned that the anchors seemed full.

A On the six mile scale which I put on temporarily to get it I would estimate probably 20 to 30 contacts.

Q What type of radar do you have?

A Decca.

Q Is that a 3 centimeter, 10 centimeter?

A 3.

Q Where were you coming from on this voyage?

A Delaware City, Delaware.

Q And what was your expected arrival time in New York in the anchorage?

A We expected to be at Stapleton roughly at -- on leaving Delaware City, between 09 and 10 hundred. Docking orders were for 1400.

Q When did you arrive at Ambrose?

A I would have to look at the logbook. I can give you an approximate answer if that would be all right. I believe the time was 0700 but I would have to look up the exact time to find out.

Q What was the visibility and weather like there?

A Poor visibility and light and light southeasterly wind.

Q Why did you continue to come in from Ambrose?

A In expectation of being able to find safe anchorage.

Q I see. Did the fog get worse as you came in toward the --

A At times it was quite heavy and at times it lightened up considerably.

Q What made you decide that you would not? Was it just the number of contacts that made you decide anchoring at Gravesend Bay rather than come on in?

A Yes, sir.

Q Do you have any records of your anchor bearings when you were able to get them?

A Yes, sir, they are on the chart on the vessel..

Q What communications did you have with the PONCE de LEON after the collision?

A Shortly after the collision he called,inquired if there was any difficulty. I don't remember his exact wording but he did put in a call to which we answered and we had no need for any assistance.

Q What were your drafts at the time that you anchored?

A 3108 forward and 3111 aft.

Q When you came up to the bridge could you tell if the PONCE de LEON had power on ? By that I mean, was she going head on her engines?

A It appeared to me there was somepropeller wash from the stern.

Q When you saw her, was she swinging to the right or was she coming straight ahead?

A She appeared to be on a straight course.

Q She didn't seem to be trying to sheer away from you?

A Not to my knowledge.

Q Had you instructed the bow lookout as to what signals he was supposed to sound?

A Yes, sir. That's passed on from lookout to lookout.

Q So as far then as radio communications with the PONCE de LEON before the collision you have only the statements of your third officer as to what was said?

A Yes.

INVESTIGATING OFFICER: All right, Captain, that's about all the questions I have. Do you have anything else that you might happen to think about --

CAPTAIN BRIXEN: No, I believe that's all.

INVESTIGATING OFFICER: Captain, you can waive the signing of this. You don't have to sign it if you don't want to.

CAPTAIN BRIXEN: What is your advice Mr. Wendelburg? Will this be held against me?

INVESTIGATING OFFICER: No, it's not held against you.

CAPTAIN BRIXEN: I would be perfectly willing to sign. (Off the record)

INVESTIGATING OFFICER: I see. Let the record show that Captain Brixen has asked for a copy of the statement since he will not be available to sign it. We will mail a copy to his home address and if there are any corrections he feels

should be made, any errors, they can be corrected. That's all I have, Captain. Thank you for your cooperation.

CAPTAIN BRIXEN: You're welcome.

(Witness excused)

Def Ex. B

pc-12

MR. FARAGO

INVESTIGATING OFFICER: Let the record show that this investigation is being conducted at the Marine Inspection Office, New York, New York, on May 11, 1973. The statement is being taken from John Farago --

MR. FARAGO: George.

INVESTIGATING OFFICER: --George Farago, excuse me, Z number 820174-D3 and is convened under the authority of R.S. 4450, as amended, 46 U.S.C. 239 and the regulations promulgated thereunder to investigate the collisionbbetween the WILMINGTON GETTY and the PONCE de LEON. This investigation is intended to determine if there is any evidence of incompetence, misconduct, unskillfulness or willful violation of the law on the part of any person or licensed officer involved. All witnesses will be examined under oath. The witness is subject to the Federal penalties for perjury and making false statements under 18 USC 1001. I'm going to ask you to stand to be sworn. Do you have any objections to this?

MR. FARAGO: None.

MR. GEORGE FARAGO was called as a witness by the Investigating Officer, was sworn, and testified as follows:

INVESTIGATING OFFICER: I must first warn you of the following. I want you to understand that you have a constitutional right to refuse to answer any of my questions. Do you understand that?

MR. FARAGO: Yes.

INVESTIGATING OFFICER: You also have the absolute right to remain silent and if you choose to answer any questions, any statements, it could be used against you. Do you understand that?

MR. FARAGO: Yes.

EXAMINATION BY INVESTIGATING OFFICER:

Q Will you please state your full name and address?

A George Farago, Colony North Apartment 526, Colony Boulevard, Wilmington, Delaware, 19808.

Q How long have you been going to sea?

A Approximately thirty years.

Q What licenses or documents do you hold that were issued by the Coast Guard?

A I have a mariner's document and a second mate's license.

Q Is that second mate's license oceans --

A Oceans, unlimited.

Q Do you have any pilotage or --

A No pilotage.

Q Were you serving on the SS WILMINGTON GETTY on 10 May?

A Yes, I was.

Q What were your duties aboard her?

A Third mate.

Q Would you describe any unusual incidents on that ship on that date, specifically the collision?

A At 1313 we were struck by the vessel PONCE de LEON while at anchor.

Q I see. And you were mate on watch?

A I was mate on watch at the time.

Q Approximately what time did you anchor, did the vessel anchor?

A Well, I didn't check the time when the vessel dropped anchor. I wasn't on watch at the time.

Q You were the 12 to 4 watch?

A I'm on the 12 to 4 watch, yes, sir.

Q Did the fog clear at all while you were on watch before the collision?

A No, it didn't.

Q What would you estimate the visibility to be?

A I would say approximately 200 yards.

Q And what time did the collision occur?

A At 1313.

Q Were there any other persons on the bridge with you?

A Not at the time.

Q Were there any other persons on watch on the bow?

A Yes, there was an able seaman on the bow at the time of the collision.

Q What were his duties?

A He was sounding the prescribed fog signals at the time.

Q What were his instructions?

A To sound inland fog signals as prescribed in the rules.

Q Well specifically, what was that to be?

A To rapidly ring the bell for at least five seconds at intervals not to exceed one minute.

Q I see. Did he sound them at frequencies of less than one minute?

A Yes, much less frequency than one minute.

Q When did you become aware of, that a risk of collision existed?

A When the PONCE de LEON passed buoy 18 and turned right.

Q How long had you been observing this vessel on the radar?

A It was very heavy traffic at the time and I can't be sure that this particular vessel was observed constantly, but I had been tracking all traffic in the channel for the entire duration of my watch and he came to my close attention when he passed buoy 18 and turned right.

Q How do you know he turned right?

A His radar picture indicated right turn.

Q You mean by a blurring of it ?

A His image pip on the radar screen was well defined and I could see the vessel turn to the right.

Q How had you been tracking, just mentally or with a plotting board?

A On relieving the watch the vessel was swinging to the flood tide and I had lined the cursor on the radar up with the Ambrose channel buoys and as long as the target stayed to the right of the cursor marks I knew that the vessel was in the clear.

Q How many vessels had gone, had passed by your location while you were on watch?

A Well, I can't really be specific on that, but I would say that there had been at least from eight to ten vessels that had passed.

Q Do you remember a vessel passing by you shortly before the collision, approximately say one mile ahead of the PONEE de LEON, or was there any regular intervals of the vessels passing by?

A Well it was at that particular time a constant heavy line of traffic and I couldn't be certain on the passing of the vessel one mile ahead.

Q Did you have any radio communications with the PONCE de LEON prior to the collision?

A Yes, I did.

Q What were they?

A When I saw on the radar screen that the PONCE de LEON had turned to the right I immediately contacted the PONCE de LEON and informed him that we were anchored off Nortons Point.

Q And then what happened?

A He acknowledged my radio contact and acknowledged the fact that we were at anchor and then he stated his intention of passing to the inside of my vessel and then I again repeated that we were at anchor and he again acknowledged it and we both signed off.

Q Were there any other transmissions prior to the collision?

A Not prior to the collision, no.

Q How soon before the collsion were communications established in terms of minutes?

A I would say approximately five minutes.

Q Were you showing anchor lights?

A No, we did not have anchor lights on.

Q Do you remember seeing any lights on the PONCE de LEON?

A I don't remember seeing any lights on the PONCE de LEON.

Q Did you hear any signals from the PONCE de LEON?

A I heard no signals from the PONCE de LEON, to be distinguishable from the PONCE de LEON.

pc-18 MR. FARAGO

Q How many other signals would you say were going at any one time, do you remember?

A There were in this time period, from my taking over the watch, there were always at least three or four signals being sounded.

Q How far away from you was the PONCE de LEON when you saw her visually?

A Well I saw her bow come out of the fog and we--200 yards.

Q When you saw her turn on the radar, did you maintain a constant watch on her?

A Yes.

Q What time did you feel you should let her know that something was amiss?

A As soon as I visually saw her I blew the danger signal.

Q If you saw her coming at you was there time to have gotton on the radio and tell her that she was on a collision course with you?

A She looked on the radar screen like she would clear us.

Q Did you see any personnel on her bow as she went by?

A No, I didn't.

pc-19 MR. FARAGO

Q You didn't see anybody acting as bow lookout, any personnel like that?

A Could I put it this way. As soon as I saw her bow pass our bow I followed the ship down. In other words, I was looking at our bow in relation to hers as she was going by.

Q Do you happen to remember what the position of her anchors were?

A No, I don't.

Q Could you estimate her speed as she went by you?

A She was making a fair speed.

Q While you were anchored there, how many other vessels were in that anchorage?

A One.

Q One other vessel?

A Yes.

Q Were you ever able to determine the identity of that vessel at any time during the morning before the collision?

A No.

Q When did you -- did you ever find out what it was?

A After the fog lifted I saw that it was a Corps of Engineers dredge.

pc-20 MR. FARAGO

Q About how many radar contacts did you have at any one time on the scope?

A Again I would say three to four.

] Q At any one time?

A At any one time.

Q Did you ever put it up on the 6 mile scale or higher?

A No, I never did.

Q How many vessels would you estimate or do you have any way of estimating how many vessels were in the various anchorages around the area?

A I have no way of knowing. Only the one that was in close proximity.

Q When the PONCE de LEON hit, did you feel any motion to your own vessel, any kind of a shock?

A Yes. I seem to have felt a surge forward and then a rocking motion.

Q Did you check the position of your vessel after the collision?

A Yes, I did.

Q Did it remain the same?

A Yes, it did.

Q What scope of chain were you anchored to?

A Four shots.

pc-21 MR. FARAGO

Q When you first saw the PONCE de LEON, could you tell what type of movement she was making, by that I mean was she coming at you or was she trying to sheer away from you, or was she backing down?

A She was crossing this way (indicating) I know motions don't follow through, but she seemed to be at an angle like this..

Q That's about 30 degrees off your center line?

A Correct.

Q Going from starboard to port?

A Starboard to port.

Q She did not appear to be altering course at all?

A Not in the short time that I observed her.

relieved by HB

HB relieved PC
HB-1

MR. FARAGO

BY THE INVESTIGATING OFFICER:

Q What signals did you sound when you saw the PONCE DE LEON?

A I sounded the danger signal.

Q Did she reply?

A No, I didn't hear no reply.

Q Did you hear any signals from the PONCE DE LEON once you saw her visually?

A No, I didn't.

Q What was the movement of the PONCE DE LEON after the collision?

A She passed off to our starboard side.

Q Did she call you on the radio?

A Yes, she called us and asked if we were all right and if we were in any trouble. I acknowledged his call and thanked him for calling.

INVESTIGATING OFFICER: All right, Mr. Farago, I think that's about all we need. It will take probably until Monday, maybe Tuesday to get the statement typed up for your signature. Will you be available to sign at that time? If not, you can waive your signature. This in no way prejudices you or changes anything. It gives you an opportunity to check the transcript, to make sure it is what you said it was. If you are not going to be here in New York next week or in the near future, we can send you a copy. If you have any objections to it, then you can let us know.

HB-2

MR. FARAGO

WITNESS: All right.

INVESTIGATING OFFICER: We have your address on the record.

WITNESS: Yes.

INVESTIGATING OFFICER: That's where you would like us to send it to you?

WITNESS: Yes, unless the company--

INVESTIGATING OFFICER: Let's go off the record for a moment.

(Off the record)

INVESTIGATING OFFICER: Mr. Farago, we will send you a copy then at the address you have given us, and this concludes the questioning for this period. I would like to thank you for your cooperation.

WITNESS: You're welcome.

INVESTIGATING OFFICER: We are going back on the record so Mr. Farago, the third officer, can make a correction to his previous statement concerning the direction, the movement of the PONCE DE LEON. So, Mr. Farago, will you go ahead.

WITNESS: Yes. I observed the PONCE DE LEON to pass off to my port after the collision.

INVESTIGATING OFFICER: Okay, fine. Is that it?

WITNESS: Yes.

INVESTIGATING OFFICER: Thank you very much. We will go off the record now and we will start with the next man.

(Witness excused)

wcs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

GETTY OIL COMPANY (EASTERN OPERATIONS), INC.,

Plaintiff,

-against-

73 Civ. 3480 (lwp)

SS PONCE DE LEON, her engines, tackle, etc., Sun Leasing Co. and Transamerican Trailer Transport, Inc.,

Defendants.

LIABILITY TRIAL

Before:

HON. RICHARD H. LEVET,

District Judge.

New York, September 19, 1975;
10.00 o'clock a. m.
(Room 2103)

APPEARANCES:

KIRLIN, CAMPBELL & KEATING, Esqs.,
Attorneys for Plaintiff;
BY: LAWRENCE J. BOWLES, Esq., of Counsel.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, Esqs.,
Attorneys for Defendants;
BY: LAWRENCE J. MAHONEY. Esq.,
VINCENT J. BARRA, Esq., of Counsel.

---

79790

THE COURT: Although this is a nonjury case and customarily I do not resort to opening statements, if counsel wish I will take a brief opening statement from both sides.

So, Mr. Bowles?

MR. BOWLES: Yes, your Honor, I would like to make a very brief opening statement.

THE COURT: Go ahead.

MR. BOWLES: Your Honor, considering the fog conditions prevailing today, this seems a most appropriate day to try a collision case in fog, which occurred in dense fog.

THE COURT: Yes. It is the kind of day such thingsoccur in the harbor, I suppose.

MR. MAHONEY: Inevitably.

THE COURT: I will take judicial notice of that much. That is not the case; that is not the proof.

MR. BOWLES: Your Honor, this suit results from a collision on May 10, 1973, in New York Harbor in conditions of dense fog.

The Wilmington Getty, owned by the plaintiff, was anchored some distance outside of the channel, and the Ponce de Leon was moving at excessive speed for the conditions.

Plaintiif sues for its damages, and the defendant

has filed a counterclaim.

THE COURT: Yes. I think there is a difference of maybe $200,000 or something like that.

MR. BOWLES: Approximately, your Honor.

The collision resulted, we submit, from the sole fault and negligence of the Ponce de Leon. Thus, the plaintiff is entitled to its damages, and the counterclaim should be dismissed.

THE COURT: That is a good old Spanish explorer's name, isn't it?

MR. BOWLES: Yes, your Honor.

MR. MAHONEY: Fountain of Youth, I think, if I remember correctly.

MR. BOWLES: Your Honor, the Wilmington Getty was properly anchored well outside of the channel, complying with all her duties in fog. She was sounding proper fog signals by ringing a bell on her bow for a period of five seconds at intervals not exceeding one minute. She was operating her radar, keeping a close observation on vessels proceeding up and down the channel, well clear of her, and her mate was monitoring her VHF radio --

THE COURT: With a radar, you mean?

MR. BOWLES: He had his radar on, your Honor.

THE COURT: And a radio?

MR. BOWLES: And a radio also.

On January 1, 1973, the United States Government passed legislation which came into effect on that date to require all vessels navigating to maintain a watch on what they call the bridge-to-bridge radio channel -- that is Channel 13 here in the harbor - and we were.

THE COURT: Before that, it was held to be a reasonable degree of caution to do so.

MR. BOWLES: Yes, your Honor. It had come into practice before it was actually made a statutory requirement.

With the Wilmington Getty anchored, the Ponce de Leon was proceeding, we will show, at a speed of 11 to 12 knots up the channel. Because of the fog conditions, she felt it necessary to pull out of the channel to go to anchor herself, and she thus turned. When she turned out of the channel, she turned to go almost directly at the Wilmington Getty, which was anchored.

We submit there was no good reason for that turn; that based on proper use of her own radio and radar, she should have determined that the Wilmington Getty was anchored.

The Ponce de Leon continued, having a situation where she had two radars in use, she had seen the Wilmington

Getty on radar and spoken to her on radio, and knew that she was anchored. Notwithstanding this knowledge, the Ponce de Leon proceeded ahead and actually collided with the anchored and stationary Wilmington Getty.

Under the law, your Honor, there is a presumption of negligence against a moving vessel which strikes a stationary object. Here the Ponce de Leon also committed several serious statutory violations, beginning with excessive speed in fog, 11 to 12 knots.

THE COURT: These are all set out in the complaint, are they not?

MR. BOWLES: I believe so, your Honor, yes.

THE COURT: Was there a pretrial order in this case?

MR. BOWLES: Yes, your Honor.

MR. MAHONEY: There is.

MR. BOWLES: We have stipulated to certain facts in the pretrial order as well.

Article 16 of the U. S. Inland Waters requires vessels in fog to go at a moderate speed, which the Courts have held to be a speed at which the vessel can stop within the distance of visibility of sighting some other object, assuming that other object is also --

THE COURT: So it is varied, depending upon the

exact situation?

MR. BOWLES: That is right, your Honor. But vessels have been held at fault for violating the moderate speed rule by going only 3 to 5 knots. Here we will show the Ponce de Leon was grossly exceeding that rate.

THE COURT: I understand.

MR. BOWLES: The Ponce de Leon heard the fog signals of the Wilmington Getty, and notwithstanding that, she did not know what the Wilmington Getty was doing, she continued on ahead and she failed to stop her engines, a further violation of Article 16.

There was also improper lookout and improper use of radar, both of which could have helped avoid this collision.

We submit that the rule applies here that the Ponce de Leon will have the burden of showing not only that her serious violations of statute did not but could not have contributed to the collision, and the burden is also shifted to the Ponce de Leon, having struck a stationary object, to prove the fault, if any, of the Wilmington Getty -- which, of course, we deny.

On the facts of this case, we submit the Ponce de Leon cannot carry its burdens and should be held in sole fault for this collision.

THE COURT: All right.

Now Mr. Mahoney for the defendant.

MR. MAHONEY: Yes, sir. We have the advantage of you, your Honor, in that most of the testimony, everything if not the expert testimony, is already a matter of record. In this respect we have the advantage of having heard and read the testimony of all of the officers who were involved in this situation.

With respect to the maneuvers of the Ponce de Leon, the testimony shows that our vessel was proceeding into the harbor in a line of vessels. It was a very congested day. It was also a day of extremely limited visibility.

There is testimony that on occasion the visibility was 200 yards or less.

At the first opportunity inbound our vessel turned out of the channel at Buoy 18. I think this is a significant part of the case, because the exhibits, the charts, and the expert testimony will disclose that this is the customary spot where vessels leave the channel. This is not a matter of --

THE COURT: In other words, it is a throughway situation?

MR. MAHONEY: Very much so. The charts indicate and the testimony will show that vessels proceeding to the

wcs

anchorage area necessarily pass through this particular area where the Getty was anchored.

As our vessel reached that point at Buoy 18, she turned right and did detect on her radar a blip which turned out to be the Getty. However, our master was in doubt as to the course of the other vessel, because his testimony was that at extremely slow speeds it is very difficult to determine whether the other vessel is at motion, moving very slowly, or is in fact anchored and moving with the tide.

As it turned out, his judgment was not accurate, because the vessel, which turned out to be the Getty, was in fact anchored.

However, we submit that the Getty in three distinct procedures contributed very substantially to this occurrence. The first one I have already referred to, in that the spot where the Getty anchored was ill-advised, it was really the first area that she could have dropped her hook after turning out of the channel. She did not proceed in the direction of the anchorage. She dropped her hook in a section of extreme congestion.

As a matter of fact, one of the statements made by Captain Meade of our vessel was that he expected that the blip that he saw was a vessel underway, because that was, I think the term he used, a shaping-up vessel, where vessels

wcs

would turn out of the channel and then proceed on their destination.

So first we say that this was an ill-advised location, particularly in view of the weather conditions which existed.

THE COURT: Ill-advised location for what, for whom?

MR. MAHONEY: For anchoring the Getty. Not only was the Getty anchored in close proximity to the channel, but I think, much more significantly, in an area where vessels customarily left the channel in that direction, toward the anchorage area.

Secondly, in view of the congestion and, more specifically, the weather conditions, we charge the Getty with an error in judgment in anchoring in that spot.

It should be borne in mind that the Getty had been there since shortly after 8 o'clock that morning, and this occurrence took place at shortly after 1 p.m., 1313 hours, as I recall.

Secondly, we submit that the Getty in two other instances contributed to the collision by not taking prudent steps to avoid the collision in the five-minute period that the watch officer had available to him.

The testimony, I think, is clear. Mr. Farago,

wcs

who was the watch officer of the Getty, detected the Ponce de Leon as she turned out of the channel at Buoy 18, as she was coming right. This was at 1308 hours. He had the vessel under radar observation until the moment of the collision. All right, he picked her up visually seconds before. But this was a period of five minutes.

He testified on his deposition that if he had recognized that this vessel was on a collision course with him that he could have and would have released the anchor chain.

It should be borne in mind that at this time the tide was at the flood, which, as you --

THE COURT: He could have gone in, then, after release?

MR. MAHONEY: He would have fallen back, according to his own testimony, he would have fallen back and --

THE COURT: At least out of the line.

MR. MAHONEY: Well, this is significant, in view of the fact that this collision almost did not occur. As the Ponce de Leon came right across the bow of the anchored Getty, she struck the anchor chain, and from the anchor chain ricocheted into the bow of the vessel.

THE COURT: In other words, what you are saying is that if there had been opportunity to fall back, the

wcs

collision would have been avoided?

MR. MAHONEY: Exactly. Mr. Farago made that statement himself, except that he said in his judgment that this collision was not going to occur; that his interpretation of the radar reading was that the Ponce de Leon was going to pass clear of the Getty, and this evasive action was not necessary.

But he made no bones of the fact that if he had followed that procedure, he had two men on the bow, that this could have been effected, in his opinion, in about two minutes, bearing in mind he had a five-minute period.

In a somewhat related but distinct contribution to this occurrence, there was also testimony by Mr. Farago that the engines were, as the expression is, "finished with engines." And there will be expert testimony to explain that, but I think it is no dispute that what that means in effect is that the engines were shut off.

THE COURT: I understand.

MR. MAHONEY: He testified that it would take 15 minutes for power to be available from the time the first order was given to the engine room until the first bell, which was the first opportunity to move.

He was questioned about placing the engines on standby, which --

THE COURT: You don't need to go into too much detail on this opening.

MR. MAHONEY: You are familiar with that. Well, on standby he said that he would have instantaneous power available to him and that vessels are kept on standby if an emergency situation is considered to exist.

So we submit that under these weather conditions this was clearly a situation where occurrences exactly like this could have been anticipated. And if he had or if the master had ordered engines on standby, he would have had ample time to fall back with full astern and avoid this occurrence, which barely happened.

So we feel that there are three distinct areas where the Getty substantially contributed to this occurrence.

THE COURT: All right. I propose to state on the record the general nature of this proceeding and the order of proof, not of this necessarily, but I propose to take the evidence today as far as you can get it in today, of proof, gentlemen, with respect to the liability; and, in connection with that, sufficient proof so that I may be able to decide, have whatever evidence there is, to decide on the measure of liability, in view of the Supreme Court decisions which have abandoned apparently this fifty-fifty

doctrine, if it was ever firm.

Then the next phase of it will be a determination of the actual damages after that determination. By that time the formula will have been supposedly decided.

I take it there is no objection to that procedure, gentlemen?

MR. BOWLES: No, your Honor. I would just comment that the fact that the Supreme Court has changed to proportionate fault does not mean that there cannot be a sole fault case in any case.

THE COURT: No, I suppose it does not mean that there could not be a fifty-fifty case either.

MR. BOWLES: I would agree with that also, your Honor.

THE COURT: In other words, it is an open question, isn't it --

MR. BOWLES: Yes, your Honor.

THE COURT: -- depending on the relevant facts on each side of the fence.

Well, at any rate we will go ahead.

You may proceed with your first proof.

MR. BOWLES: Thank you, your Honor.

THE COURT: Deposition or whatever.

MR. BOWLES: We have no live fact witnesses.

THE COURT: All right. Then the depositions.

MR. BOWLES: Yes, depositions and documents.

THE COURT: Fine.

MR. BOWLES: The watch officer of the Wilmington Getty, unfortunately, passed away shortly after his deposition was taken, and --

THE COURT: It is still admissible, is it not, Counsel?

MR. MAHONEY: We have no objection.

THE COURT: No objection.

MR. BOWLES: We will proceed with offering, however, exhibits, and I have one possible expert witness which I would like to save for rebuttal, depending on what defendant does. I believe it is the defendant's obligation to go forward with its proof of our negligence.

THE COURT: All right. Don't hold him back if you think it is not rebuttal, because there might be some objection because of that, I don't know. It is up to you.

MR. BOWLES: All right, your Honor.

THE COURT: I want to say this about admiralty lawyers. I compliment them definitely, after a good deal of experience in this particular field. They are always, to my mind, fair and above board on objections to questions, and so forth. Frequently an objection will be made and

then the questioner will withdraw his question. I don't ask you to do that, but I have seen that done.

All right, go ahead, Mr. Bowles.

MR. BOWLES: Thank you, your Honor.

Your Honor, this case had previously been assigned to Judge Pierce, and we thought at one time that we were going to be ready for trial on short notice. According to Judge Pierce's request, I have pre-marked each exhibit.

THE COURT: All right. Offer it now, Counselor. Have it first marked by the clerk for identification.

(Plaintiff's Exhibit 1 was marked for identification.)

THE COURT: That is solely a deposition, and it is the entire deposition?

MR. BOWLES: Yes, your Honor. This is the deposition of George Farago, the third mate and watch officer of the Wilmington Getty.

THE COURT: Any objection?

MR. MAHONEY: No objection.

THE COURT: Mark it in evidence, then.

(Plaintiff's Exhibit 1 was received in evidence.)

MR. BOWLES: I offer this in evidence.

wcs

THE COURT: Mark the map or chart f

tification.

(Plaintiff's Exhibit 2 was marked for identification.)

THE COURT: There are some markings on t

believe?

MR. BOWLES: Yes, your Honor.

THE COURT: Are they related in the deposit

of this witness?

MR. BOWLES: Yes, your Honor. This is the chart No. 540, in use on the Wilmington Getty, your Honor.

I offer it in evidence.

THE COURT: Any objection?

MR. MAHONEY: No objection.

THE COURT: Mark that in evidence.

(Plaintiff's Exhibit 2 was received in evidence.)

THE COURT: What is this, a bigger chart or what?

MR. BOWLES: Your Honor, this is chart No. 369. It shows a bit more of New York Harbor. It was also on the Wilmington Getty, and there are markings on it made by Mr. Farago after the accident, which he used to show the captain --

THE COURT: Are they in one of the depositions?

MR. BOWLES: It is in the deposition, yes, sir.

THE COURT: This first one?

MR. BOWLES: Both charts are identified in Mr. Farago's deposition.

THE COURT: Any objection?

MR. MAHONEY: No objection.

THE COURT: Mark that in evidence.

(Plaintiff's Exhibit 3 was received in evidence.)

MR. BOWLES: Your Honor, this is the deck log book of the Wilmington Getty.

THE COURT: Mark it for identification.

(Plaintiff's Exhibit 4 was marked for identification.)

MR. BOWLES: I offer it in evidence, your Honor.

MR. MAHONEY: No objection.

THE COURT: No objection?

Mark it in evidence.

(Plaintiff's Exhibit 4 was received in evidence.)

THE COURT: Does the log show the engine changes and so forth?

MR. BOWLES: We have a bell book to show that,

wcs 18

your Honor.

THE COURT: All right.

MR. BOWLES: Your Honor, this is the bridge bell book of the Wilmington Getty.

THE COURT: No objection?

MR. MAHONEY: No objection.

THE COURT: Mark that in evidence.

(Plaintiff's Exhibit 5 was received in evidence.)

MR. BOWLES: Your Honor, the engine bell book of the Wilmington Getty.

MR. MAHONEY: No objection.

THE COURT: Mark it in evidence.

(Plaintiff's Exhibit 6 was received in evidence.)

MR. BOWLES: Your Honor, this is a statement prepared by the watch officer of the Wilmington Getty shortly after the collision.

MR. MAHONEY: No objection.

THE COURT: Mark it.

(Plaintiff's Exhibit 7 was received in evidence.)

THE COURT: This was a third mate of the Getty, sir?

wcs

MR. BOWLES: Yes, your Honor.

THE COURT: All right.

MR. BOWLES: Your Honor, this is a diagram showing the angle of collision prepared by the watch officer of the Wilmington Getty.

THE COURT: Did he testify to it at any time from the depositions?

MR. BOWLES: Yes, your Honor. He drew that at the deposition.

THE COURT: Any objection?

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 8 was received in evidence.)

MR. BOWLES: Your Honor, this is a further diagram prepared by the mate, the watch officer of the Wilmington Getty, showing the radarscope and the system they have for what they call the cursor. In other words, there is a center line from the center of the radar, which is your position, and then there are parallel lines to the center line, which the mate described using at his deposition.

MR. MAHONEY: No objection.

THE COURT: Received.

wcs

(Plaintiff's Exhibit 9 was received in evidence.)

MR. BOWLES: Your Honor, this is the deposition of Captain Jens G. Brixen, master of the Wilmington Getty.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 10 was received in evidence.)

MR. BOWLES: Your Honor, this is a United States Coast Guard report of accident form prepared on behalf of Wilmington Getty and signed by Captain Brixen.

MR. MAHONEY: No objection, sir. I would like the record to show that annexed to this report is a statement that was apparently attached to it by Captain Brixen. I assume that is part of the exhibit, Mr. Bowles?

MR. BOWLES: Yes. In fact, it is referred to in one of the paragraphs, that he said to see the attached sheet, which that is.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 11 was received in evidence.)

MR. BOWLES: Your Honor, this is a further report, another report, prepared by the master of the

wcs

Wilmington Getty, dated May 12, 1973.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 12 was received in evidence.)

MR. BOWLES: Your Honor, I have here stapled together four photographs showing the damage to the bow of the Wilmington Getty.

THE COURT: When were they taken, Counselor, if you know?

MR. BOWLES: At the shipyard shortly after the accident. After the accident she had to go in immediately for repairs, which she did at Baltimore.

THE COURT: Was there a surveyor there?

MR. BOWLES: There was, your Honor. We were not going into the surveys at this time or the damages.

THE COURT: All right.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 13 was received in evidence.)

MR. BOWLES: Your Honor, this is a copy of U. S. Coast Guard local notice to mariners, dated March 7, 1973. It is Notice No. 10.

wcs

THE COURT: Is that after the accident?

MR. BOWLES: No, it was before the accident, your Honor. I am referring to the paragraph on the second page of this document, which shows that the anchorage area adjacent to where the collision occurred was actually closed to navigation at that time.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 14 was received in evidence.)

xx MR. BOWLES: Your Honor, this is a diagram prepared by the master of the Wilmington Getty, showing the angle of collision.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 15 was received in evidence.)

xx MR. BOWLES: Your Honor, may I ask opposing counsel a question at this time?

THE COURT: Yes.

MR. BOWLES: Are we going to have Captain Meade, the master of the Ponce de Leon, as a witness at this proceeding?

MR. MAHONEY: No, he will not be here personally,

We have been unable to contact him.

MR. BOWLES: I would like to offer Captain Meade's deposition. This is my discovery deposition of Captain Meade of the Ponce de Leon.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 16 was received in evidence.)

MR. BOWLES: Your Honor, as Exhibit 17 I would offer copy of our notice of deposition.

THE COURT: Why do you need that?

MR. BOWLES: Your Honor, I demanded the discovery depositions of the master, deck watch officer, helmsman, lookout, and engineer of the Ponce de Leon on the date of the accident. The only witness produced for me was the master. I would like to have this on the record.

MR. MAHONEY: I have no objection. I don't consider it relevant as an exhibit, but I don't object to it.

THE COURT: Received.

(Plaintiff's Exhibit 17 was received in evidence.)

THE COURT: What is this you are offering now?

MR. BOWLES: This is the deck log book of the

wcs

Ponce de Leon, your Honor. I would offer only the page for May 10, 1973, as my next exhibit.

THE COURT: Just the one page is offered.

MR. BOWLES: Unless opposing counsel wish other pages.

THE COURT: Let him speak for himself.

MR. MAHONEY: My only comment is that at the deposition of the witness the entire log was marked for identification. But I would agree with Mr. Bowles that only this page is relevant.

THE COURT: All right. So be it. Mark that page in evidence.

(Plaintiff's Exhibit 18 was received in evidence.)

MR. BOWLES: Your Honor, as the next exhibit, the engine log book page covering May 10, 1973, for the Ponce de Leon -- two pages.

MR. MAHONEY: A two-page exhibit.

No objection.

THE COURT: Received.

(Plaintiff's Exhibit 19 was received in evidence.)

MR. BOWLES: As the next exhibit, your Honor, the bridge bell book of the Ponce de Leon.

MR. MAHONEY: No objecion.

THE COURT: Received.

(Plaintiff's Exhibit 20 was received in evidence.)

MR. BOWLES: Your Honor, as the next exhibit, the chart from the Ponce de Leon, the chart in use on the Ponce de Leon.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 21 was received in evidence.)

MR. BOWLES: As the next exhibit, your Honor, the course recorder tape of the Ponce de Leon.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 22 was received in evidence.)

MR. BOWLES: May I make a request? Would you mind cutting that off? There is an awful lot there that is not relevant to the collision.

THE COURT: What do you want to do?

MR. BOWLES: Cut part of this off. We are only concerned with the last section of it. It might be easier to handle.

THE COURT: If it is agreed upon.

MR. MAHONEY: I would be somewhat concerned --

THE COURT: Let us not do it now.

MR. MAHONEY: Yes.

THE COURT: Later on, if it is suitable, do it. How is that made out? It is a tape?

MR. BOWLES: Yes, your Honor, it is a tape.

THE COURT: Is it translated, that is, written out now on this paper?

MR. BOWLES: It shows the headings and times --

THE COURT: No, I mean what kind of a paper is this that is shown here?

MR. BOWLES: I am afraid I don't understand.

THE COURT: Is it typed?

MR. BOWLES: No, no, this is the original record from the ship. It is a pen which makes a mark on the tape contemporaneously with the changes in compass course of the ship.

THE COURT: I assume it is in suitable form for admission. If it is not a transcription of a tape, it ought to be disallowed at this time.

MR. BOWLES: I think your Honor can read this fairly easily in conjunction with the deposition of the master of the Ponce de Leon.

THE COURT: All right, if it is legible.

MR. BOWLES: We did go into that at one point.

THE COURT: Later if we come to it you may have to produce a legible copy of it.

MR. BOWLES: Next, your Honor, the report of vessel casualty or accident prepared by the master of the Ponce de Leon.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 23 was received in evidence.)

MR. BOWLES: Your Honor, this is the trial trip report of the Ponce de Leon showing certain maneuvering characteristics of the Ponce de Leon.

THE COURT: After the accident?

MR. BOWLES: It was prepared before the accident. It is a document which at the time the ship is built and delivered to the owner they perform certain tests of steering and maneuvering, which this is a report of.

THE COURT: Is this relevant, really?

MR. BOWLES: I refer to it in the deposition of the captain of the Ponce de Leon.

MR. MAHONEY: I don't object.

THE COURT: No objection?

wcs

Received.

(Plaintiff's Exhibit 24 was received in evidence.)

THE COURT: Are you nearly to the bottom of your barrel, Counselor?

MR. BOWLES: Yes, your Honor.

Your Honor, this is a blueprint of the Ponce de Leon, her capacity plan, showing her arrangement and configuration.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 25 was received in evidence.)

THE COURT: There ought to be a law against more than 25 exhibits, Counselor, but go on.

MR. BOWLES: Your Honor, the next is a diagram of the bridge, the pilothouse of the Ponce de Leon, prepared by her master at his deposition.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 26 was received in evidence.)

MR. BOWLES: Next, your Honor, some photographs showing the damage sustained by the Ponce de Leon in this

matter. You will note a long rake down the side of the vessel as she raked her side across the bow of the anchored Wilmington Getty.

THE COURT: That depends on whose ox is gored. You say: as she did something.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 27 was received in evidence.)

MR. BOWLES: Next, your Honor, a copy of the transcript of the Coast Guard testimony of Joseph Patocka, who was the chief officer of the Ponce de Leon at the time.

MR. MAHONEY: Up to this point, your Honor, I think all of the exhibits were the subject of a prior agreement. The pretrial order stipulated that all of these exhibits which had been previously identified during the testimony of the various witnesses would be admissible. The next three and the last three that Mr. Bowles is offering I think are somewhat of an afterthought. We heard about them I think for the first time yesterday, that he did propose to submit them.

We don't object as such, except that we would like the reciprocal privilege of putting in two similar transcripts of the testimony of Captain Brixen and Mr. Farago, also at the Coast Guard hearing. With that

provision, I would have no objection.

MR. BOWLES: I would have no objection to that.

THE COURT: All right, he says he does not object to your exhibits. It will go in, then.

(Plaintiff's Exhibit 28 was received in evidence.)

MR. BOWLES: Your Honor, next the transcript of the Coast Guard testimony of William J. Benson, third officer and watch mate of the Ponce de Leon.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 29 was received in evidence.)

MR. BOWLES: The next, your Honor, and last exhibit, the transcript of the Coast Guard testimony of Jose A. Ahorrio , second officer of the Ponce de Leon.

MR. MAHONEY: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 30 was received in evidence.)

THE COURT: That is all on proof?

MR. BOWLES: Yes, your Honor. Those are all I have on the facts of the accident, your Honor. I believe on these documents we will establish conclusively that the

collision occurred through the sole fault of the Ponce de Leon.

THE COURT: I will make a comment now. I think this is the way to try a collision case.

I think you should also, Counselor, put into evidence, either by repetition or incorporation, the pertinent parts of the admissions or agreements set forth in the pretrial order. First your amendments of the pleadings. Is this the complaint or the answer or both?

MR. BOWLES: We have a complaint, an answer with a counterclaim, and a reply to the counterclaim.

THE COURT: Where in the pretrial order are the amendments set forth? What page?

MR. BOWLES: Paragraph 9 -- I don't believe there are any amendments, your Honor.

THE COURT: No amendments?

MR. BOWLES: No amendments to the complaint.

THE COURT: Do you agree to that -- nor to the answer?

MR. MAHONEY: There are no amendments that I am aware of.

THE COURT: All right. Then now --

MR. BOWLES: Well, there are --

THE COURT: He says there are not any; you say

there are not any. What is the truth, the full truth?

MR. BOWLES: Your Honor, in the answer -- perhaps opposing counsel have not considered this point -- in the answer they allege that the Wilmington Getty was anchored in the channel, and they have recently conceded in their pretrial memorandum, and in statements here, that that is not the case. There is no formal amendment as such.

THE COURT: Will counsel stipulate that that allegation, if it is in the complaint, is withdrawn?

MR. MAHONEY: We do not contend that the vessel was anchored in the channel as such.

THE COURT: That is in effect an amendment. Is there any agreement as to statements of fact?

MR. BOWLES: On the first page, your Honor, Paragraph 3-A on the bottom, items starting at the first page, 1, 2, 3, 4, 5 and 6, going over to page 3, are the stipulations concerning the facts.

THE COURT: All right. It is stipulated, then, as a part of the record as follows -- stating what it is now, on the record, to be deemed to be a part of this record.

MR. BOWLES: Do you want me to state those, your Honor?

THE COURT: Yes.

MR. BOWLES: In our first stipulation:

"1. This is a case of admiralty" --

THE COURT: What else, by number?

MR. BOWLES: No. 2.

THE COURT: And?

MR. BOWLES: No. 3, No. 4, No. 5 on page 2, and Item 6 at the top of page 3, your Honor.

THE COURT: All right.

The reporter is directed to type these into the transcript, so I will have it all in one record.

(The items were spread upon the record as follows:

"(1) This is a case of admiralty and maritime jurisdiction.

"(2) Getty Oil Company (Eastern Operations), Inc., was and still is a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at 660 Madison Avenue, New York, N. Y., and was and still is the owner and operator of the Steamtanker Wilmington Getty. The Wilmington Getty is a steamtanker 13,659 gross tons, 583.5 feet in overall length and 74.2 feet in breadth. On May 10, 1973, she was laden

with a cargo of about 20,000 tons of heating oil and gasoline and her drafts were 31 feet 9 inches forward and 31 feet 11 inches aft. She was engaged on a voyage from Delaware City, Delaware, bound for Bayonne, New Jersey.

"(3) Sun Leasing Co. and Transamerican Trailer Transport, Inc., defendants, were and still are domestic corporations organized and existing under and by virtue of the laws of one of the states of the United States with offices and places of business at 358 St. Marks Place, Staten Island, New York, and were and still are the owner and operator of the Steamship Ponce de Leon. The Ponce de Leon is a steamship of 15,134 gross tons, 700 feet in overall length, 92.2 feet in breadth. The distance from her bridge to her bow is approximately 350 feet. Her stern turbine engines are of 32,000 horsepower. At the material times she was laden with a cargo of trailers to drafts of 21 feet 8 inches forward and 24 feet 6 inches aft. Her displacement was thus approximately 19,400 tons. She was engaged on a voyage from San Juan, Puerto Rico, to the Transamerican Trailer Transport terminal, Staten Island, New York.

"(4) On the morning of May 10, 1973 the Wilmington Getty arrived in New York Harbor and proceeded up Ambrose Channel. The weather conditions included dense fog. As the Wilmington Getty proceeded up the channel, her radar indicated that the various anchorage areas were crowded and her master decided to anchor off Norton Point, Brooklyn; and at approximately 0856 hours, the Wilmington Getty anchored off Norton Point.

"(5) On May 10, 1973, as the Ponce de Leon transited Ambrose Channel in fog, she was advised that the tugs assigned to assist her into her berth were fogbound and would be unable to assist her for an indefinite period of time. The master of the Ponce de Leon thereupon decided to anchor in Gravesend Bay anchorage area No. 25.

"(6) At approximately 1314 hours the Ponce de Leon collided with the anchored Wilmington Getty, causing damage to the Wilmington Getty's bow and the Ponce de Leon's port side.")

---

THE COURT: Is there anything else from plaintiff, then, in the way of proof?

MR. BOWLES: Not on proof, your Honor, but again

this matter had previously been assigned to Judge Pierce, and he requested at that time that we prepare ahead of time proposed findings of fact and conclusions of law, which I have done. I would like to offer those.

THE COURT: I will take them. I don't think it is too helpful, I have never found it very helpful, because eventually I have to prepare and you have to prepare. You have to prepare first proposed findings based upon the evidence with relation to the record and to the exhibits. I will take it.

MR. BOWLES: I believe they are already submitted to your clerk. I will withhold them. I may amend, depending upon what finally comes out today, then.

THE COURT: All right. I think the best thing, then, is to rely largely on the post-trial papers, sir.

Any other proof you want to put in?

MR. BOWLES: Not at this time, your Honor.

THE COURT: All right. Then it is up to you, Counselor.

MR. MAHONEY: Your Honor, with respect to --

THE COURT: You have some exhibits, first?

MR. MAHONEY: Yes. There are only two. By prior agreement the plaintiff's exhibits are also our exhibits.

THE COURT: Very well.

MR. MAHONEY: And the only two additions are those I referred to. These are similar to the ones introduced by Mr. Bowles. The first is the --

THE COURT: Just state what they are.

MR. MAHONEY: The first is the transcript from the Coast Guard hearing of the testimony of Captain Jens G. Brixen, the master of the Wilmington Getty.

THE COURT: Any objection?

MR. BOWLES: Well, I --

THE COURT: Is it the same as yours?

MR. BOWLES: No, your Honor. These gentlemen, Captain Brixen and Mr. Farago, were both deposed. This would be probably somewhat repetitious.

THE COURT: Repetitious?

MR. BOWLES: Yes. We did agree that --

THE COURT: If that is what they testified to, I think I should take it.

MR. BOWLES: I just wanted to point out that the opposing attorneys had the opportunity to cross-examine those witnesses at the deposition.

THE COURT: That makes no great difference.

MR. BOWLES: We have no objection.

THE COURT: Mark it in evidence.

(Defendants' Exhibit A was received in evidence.)

MR. MAHONEY: The second is a similar transcript of the testimony of the Coast Guard hearing of Mr. George Farago, the third officer and watch officer of the Wilmington Getty.

THE COURT: Same ruling.

MR. BOWLES: No objection, your Honor.

THE COURT: Received.

(Defendants' Exhibit B was received in evidence.)

THE COURT: Incidentally, at this point may I say, Counselor, Mr. Bowles, that I wish you would prepare a list of all your plaintiff's exhibits, and you, Mr. Mahoney, a similar list.

MR. BOWLES: Would you like a list now, your Honor?

THE COURT: Not now, no, but later. Submit it with your post-trial papers when you submit your post-trial papers and your exhibits.

MR. MAHONEY: Those are the only two additional exhibits we wish to introduce. We rely also on the plaintiff's exhibits.

THE COURT: All right. We are through with

plaintiff's proof, are we?

MR. BOWLES: Yes, your Honor.

THE COURT: Do you have any other proof, Mr. Mahoney? You have a witness?

MR. MAHONEY: Yes, we have an expert witness.

THE COURT: I guess now is the time to call him.

MR. MAHONEY: May we, please?

THE COURT: All right. Do so. Let him sit over here. The clerk will administer the oath.

MR. MAHONEY: May I call him?

THE COURT: Yes, sir.

MR. MAHONEY: Captain Dervin, please.

- -

N I C H O L A S J. D E R V I N , called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MAHONEY:

Q Captain Dervin, what is your profession?

A Seaman. I was a captain for many years.

Q What licenses do you hold?

A Master unlimited.

Q How long have you been going to sea, Captain?

A Roughly 34 years.

Q Are you retired at the present time?

A Yes, I am.

Q Would you state for the record some of the companies for whom you sailed as a deck officer?

THE COURT: And in what particular capacity, if you would.

A United States Lines as a second and chief officer, which was during the war, and Isbrandtsen Company, Incorporated. I was a chief officer for two months, and as a master for the remaining time.

Q How many years did you sail as a master?

A 28 years.

THE COURT: 28?

THE WITNESS: 28, yes, sir.

Q In particular, Captain, during your career as a deck officer and particularly as a master, can you estimate for us how many times you entered and departed from the Port of New York?

A I would say roughly about 70 times.

THE COURT: 70?

THE WITNESS: 70, yes, sir.

Q Did the vessels upon which you served call regularly at New York Harbor?

A Yes, sir.

Q Are you completely familiar with the approaches to New York Harbor, the anchorage areas, and the channels?

A Yes.

THE COURT: As of what date, the date of this collision?

Q Are you familiar with these conditions as they existed in May of 1973?

A Yes, I am.

Q May 10, particularly?

A Yes, I am.

Q Have you any connection with either of the parties to this action?

A No, sir.

Q Do you have any factual information of your own knowledge concerning these circumstances of this incident, other than what --

THE COURT: That is, of the collision itself, not of the channels.

Q No, of the collision, the incident we are referring to.

A Only through the reading of the testimony.

Q In other words, you were not present?

A No, sir.

Q At my request and the request of Mr. Barra, have

you read the depositions of the witnesses who testified in this action on behalf of both vessels?

A Yes, I have.

Q Have you reviewed the various exhibits, in particular the charts, the logs and bell books and statements that were introduced in this action?

A Yes, I have.

THE COURT: Today?

THE WITNESS: Yes, sir.

Q The Court's question is, did you read them today?

THE COURT: No, not today. Did you read the exhibits that were introduced today? You heard them being introduced, I take it?

THE WITNESS: Yes, I have.

THE COURT: All right.

Q Captain, in particular have you reviewed the charts which have been the subject of testimony already given in this action and which indicate the position of the Wilmington Getty at anchor at the time of this collision?

A Yes, I have.

THE COURT: Show him the exhibit.

MR. MAHONEY: Yes. Exhibit 3, please.

Q Captain, would you be good enough to refer to this chart, which is Plaintiff's Exhibit 3, and I ask you, have you seen this chart before?

A Yes, I have.

Q Will you point out for the Court on that chart the location of the Wilmington Getty at anchor at the time of this collision?

THE COURT: That is, as it is portrayed on this chart?

MR. MAHONEY: Delineated on this chart, yes.

A On the chart. It is, I think, this (pointing).

THE COURT: Have him mark it, Counselor. Use a red pencil.

Q Counsel, if you would be good enough to mark with a circle and perhaps with the letters WG --

MR. BOWLES: May I just suggest, before you mark the chart: Would you put an arrow rather than a circle around it? In other words, I would suggest a leader rather than circling it, so as not to obliterate the markings that are already on there, your Honor.

MR. MAHONEY: Agreed.

THE COURT: All right.

Q And would you write at the other end of that arrow the letters WG, indicating the location of the

Wilmington Getty?

A (Complies.)

THE COURT: Is that all right with you?

MR. BOWLES: No objection to that.

Q Still consulting this chart, Plaintiff's Exhibit 3, Captain, I ask you, are you familiar with that general area in the vicinity of Buoy 18 and Ambrose Channel?

THE COURT: As of?

Q As of May of 1973?

A Yes, I am.

Q Captain, from your experience with this area, is that a congested area?

THE COURT: Was it at that time.

Q In May of 1973, from your knowledge, was that a congested area, and is it consistently a congested area?

MR. BOWLES: Your Honor, I am not sure I understand that question, in terms of the traffic -- are you referring to in terms of traffic on that day at that point?

MR. MAHONEY: I think that both elements are significant, because our point in this particular context is that only --

THE COURT: It may not be possible to pinpoint the congested area at that time, but in that general period around that time. Isn't that right?

MR. MAHONEY: That is what I am interested in.

THE COURT: Reframe your question.

Q Was that area in the general period of May of 1973 usually a congested area?

MR. BOWLES: Objection, your Honor. That is not meaningful. This witness was not present or we have not shown a basis for it.

THE COURT: If he has knowledge, that is sufficient.

MR. BOWLES: We have not shown the basis that he has knowledge of the condition on that day.

THE COURT: No, it does not have to be. It is that general period. Well, if you qualify him as to his knowledge of the general period in or about that time, that ought to be sufficient basis.

Q Captain, in a general way, are you familiar with the conditions which existed in the period surrounding May 10 of 1973?

THE COURT: And particularly the period before that date. Just generally.

A Well, according to the testimony?

Q No, your own general knowledge, Captain.

A The only thing I could say, that during the conditions that prevailed on that day, the congestion must

have been very, very heavy there.

MR. MAHONEY: You see, your Honor, the thrust of my question, I think, perhaps counsel has misunderstood.

THE COURT: No, I think the witness has perhaps misunderstood.

MR. MAHONEY: May I clarify it so that I don't add any confusion?

THE COURT: All right. Another question, then.

Q Captain, I am interested in your knowledge of this area in two respects: that in general, during 1973, in your experience, was that area recognized by mariners as an area of congestion?

A Yes, it was.

Q From your reading of the testimony, which --

THE COURT: You had better specify what testimony, whose testimony.

Q From your reading of the testimony of the master and third officer of the Wilmington Getty and the master of the Ponce de Leon, from that testimony and from your general knowledge, was that an area of congestion in particular on May 10 of 1973?

A Yes, it was.

Q What conditions, if any, aggravated the congestion in that particular area, from the testimony you have

read?

A Well, it seemed that the Getty, she was anchored just outside the channel, going into the anchorage, thereby obstructing the entrance to that Gravesend Bay anchorage by any other vessel. And in an area of that anchorage, the ships that come in there pass Buoy 18, they have to go to the right in order to get into the anchorage. And if he is there in the way, I mean, what can you do?

Q From your experience, Captain, is the area of the approaches to the harbor in the vicinity of Buoy 18 particularly congested because of the location of the anchorage?

A Which anchorage?

Q We are talking about the anchorage off Norton Point.

A Yes. Because when the ships go into the channel and pass Buoy 18, they wheel off to the right in order to either ship up or wait for the tugs or wait for orders. So there is always a congestion there.

Q Is that a common area for leaving the bounds of Ambrose Channel?

A Well, that is the only practical area there is. Stapleton piers and Stapleton anchorage is further in, and if you get in there, I mean, you can't get out there any more.

You have to either proceed or anchor, and if it is congested there, then your --

Q Well, from your experience --

THE COURT: Let him finish his answer.

Q I am sorry, I thought you were finished.

A They can't do anything, then. They have to anchor at Gravesend Bay or slow down or wait for orders or tugs or whatever.

Q From your experience with the approaches, is that area customarily recognized by mariners as an area of congestion?

A Yes, it is.

Q Under any weather conditions?

A Any.

Q Tell us, in your opinion what effect if any upon this congested nature of the area would the weather conditions have which existed on May 10?

THE COURT: First establish whether he knew, whether he has learned what they were.

Q From your review of the testimony, in particular the officers of both vessels, are you familiar with the weather conditions as they existed on the day in question?

A Yes, I am.

Q What were those weather conditions?

A They were very, very foggy, slight wind, and visibility was very poor.

Q What effect, in your opinion, did those weather conditions have upon the congested nature of that area in the vicinity of Buoy 18?

A That aggravated it still more.

THE COURT: I want to ask a question in passing: Are you familiar, did you learn, about the movement of the tides at that particular hour of the collision?

THE WITNESS: Only through the testimony.

THE COURT: Did you learn from the testimony?

THE WITNESS: Yes, I did, sir.

THE COURT: Did the tides have anything to do with this situation? If so, what?

THE WITNESS: Only in that respect that if the tide changed, the vessel swings to the tide and possibly would aggravate the situation even worse.

THE COURT: All right.

MR. MAHONEY: With the Court's permission, I would like to read to the witness certain brief excerpts of the testimony and the exhibits, which I think would lend some continuity for your Honor to understand this testimony.

THE COURT: All right.

MR. MAHONEY: May I have Captain Brixen's testimony, please?

THE COURT: Do you want to state the page of this deposition?

MR. MAHONEY: Yes, I will.

THE COURT: This is what exhibit?

MR. MAHONEY: This is Exhibit 10, the deposition of Captain James Brixen.

MR. BOWLES: What page, sir?

MR. MAHONEY: Page 32.

Q Captain, you have already testified that you have read the testimony of the officers, including that of Captain Jens Brixen, and for the record I would like you to consider certain questions and answers relating to the location of the vessel as testified to by Captain Brixen.

On page 32 of Captain Brixen's testimony, the question:

"Q Captain, where did you anchor and how far off the channel were you?

"A A little over 3000 yards.

"Q Excuse me, that is 300 yards?

"A Yes, 300 yards -- 1000 feet.

"Q How far off Anchorage 25 were you?

"A About 300 yards."

On page 10 of Captain Brixen's testimony:

"Q What time did your ship anchor in this vicinity that you have marked?

"A 0856."

And on page 25, again of Captain Brixen's testimony -- this is directed to Captain Brixen of the Wilmington Getty:

"Q Captain, were you aware that the tide would be changing at approximately 1130, from ebb to flood?

"A Yes."

Following that testimony, on page 26:

"Q Was the vessel swaying" -- and I think I would like to ask counsel's stipulation that that word should have been "swinging".

MR. BOWLES: I am sorry, what line are you on?

Line 3, "swinging".

THE COURT: It is so stipulated, Counsel?

MR. BOWLES: Yes, your Honor.

MR. MAHONEY: Thank you.

"Q Was the vessel swinging in the tide at this point?

"A I do not recall the exact time it was swinging in the tide. It is in the log book.

"Q There is an entry in the log book, 1145, vessel started to swing to flood tide.

"A That is correct."

On the same page, at line 14:

"Q Captain, what would be the range of the Wilmington Getty with three" --

Now, the testimony says "chocks"; I ask counsel to agree that that should have been "shots".

MR. BOWLES: Agreed.

Q -- "in the water" --

THE COURT: So stipulated.

Q "-- that they would swing from the tide; from what position to what position; what would be the distance? Do you understand my question?

"A I believe I do. Well, we had three shots out; each shot is 90 feet, making 270 feet and we swing -- the chain is going to be laying on the bottom and it comes around the next heading; probably in the order of 400 to 500 feet difference.

"Q Would that be increased by the length of your vessel?"

On the top of the next page, page 27:

"A That is, of course, if you have the whole length, it is going to remain the same.

"Q In other words, from" --

THE COURT: What page?

MR. MAHONEY: This is on page 27, your Honor.

Q "Q In other words, from the stern; at the position from the stern of the Wilmington getty to when she swung around to where the stern would be?

"A You would have to include the length of the vessel -- yes, you would have to include the length of the vessel.

"Q Weren't you concerned at all that with the swaying of the tide and the distance of the range of the swing, that they would be a lot closer to the channel than originally anchored?

"A I was aware she would be somewhat closer."

In this same context, I would like to read briefly from the deposition of Mr. Farago.

First I will ask you, Captain:

Did you read the testimony of Watch Officer George Farago before testifying today?

A Yes, I have.

Q I call your attention particularly to testimony on page 12 of the deposition of the watch officer of the Wilmington Getty, on the top of page 12:

"Q What were the weather conditions when you

went on watch?

"A Thick fog.

"Q Do you have an estimate of the distance of visibility?

"A I estimated distance at 200 yards."

And on the same page:

"Q What was the condition of yourship with respect to the tide? What direction was your ship pointing when you went on watch, and did it change thereafter?

"A The vessel was swinging to the flood tide.

"Q And at some time did she line up with the flood tide?

"A Yes. I estimated the lineup at approximately 12:55 or so."

MR. BOWLES: Excuse me, before you go further, I am not sure where this question is going, but I think for any hypothetical that the next question on pages 12 and 13 should be included also to give the direction in which the Wilmington Getty lined up with the flood tide.

MR. MAHONEY: I have no objection to reading it:

"Q And what direction did you line up with the flood tide, approximately? Do you know the compass heading?

"A The compass heading was direct, approximately 160, 163, in that area."

MR. BOWLES: Thank you.

Q And on page 16 of Mr. Farago's testimony, in the middle of the page:

"Q Did you see any of those vessels visually?

"A No, I didn't.

"Q Did you see the shadow of any vessel passing visually?

"A Before or after the collision?

"Q Before collision.

"A No, no, I did not.

"Q Did you see any after collision?

"A I saw the shadow of a vessel -- just a second. I saw the shadow of a vessel before the collision."

On the top of 17:

"Q Do you recall how long before the collision?

"A No, I don't."

You have read all of that testimony that I have read into the record, Captain?

A Yes, I have.

Q With respect to the testimony given by Mr.

Farago concerning a visual observation of a passing vessel at 200 yards, in your opinion does that indicate the location of the Getty after she had swung with the tide?

MR. BOWLES: I am going to object to that, your Honor. The witness Farago did not state that he saw this shadow of a vessel at 200 yards. On page 12 of his deposition he did on one question read by Mr. Mahoney state that he estimated the distance at 200 yards, but he was also asked whether that was a constant figure or did the fog vary at times. He stated that it was sometimes more, sometimes less.

THE COURT: You will have to change your hypothetical question.

MR. BOWLES: He did not know, he could not state, the time when this shadow was seen.

THE COURT: I sustain the objection to that hypothetical question. You will have to restate it, I am afraid.

Q Captain, let me ask you this: Based on that testimony by Mr. Farago, who stated that he could observe a passing vessel, does that indicate the proximity of the Wilmington Getty to the channel?

MR. BOWLES: I am going to object to that, your Hon He did not see a vessel; he saw the shadow of a vessel at

some unstated time.

THE COURT: Objection sustained.

MR. MAHONEY: But he said it was a visual sighting.

MR. BOWLES: Of a shadow through fog.

THE COURT: All right, restate it, will you, so it is apparently in accord with the evidence.

Q Considering the testimony by Mr. Farago --

THE COURT: And assuming so-and-so.

MR. MAHONEY: Yes.

Q -- and assuming he testified that he observed the shadow of a passing vessel and that he had previously testified that the visibility was 200 yards, although somewhat inconsistent, does that provide you with any information with respect to the location of the Getty after she had swung with the flood tide?

MR. BOWLES: Your Honor, I hate to keep interposing objections here, but we know where the Wilmington Getty was --

THE COURT: I am going to overrule your objection. You may ask cross-examination questions.

MR. BOWLES: Your Honor, the point is that we do not know where this other vessel was. Was he in the channel?

THE COURT: You may cross-examine. I am going

to overrule your objection.

A I would consider that the Getty was very close to the channel when she could see the ships passing by her. She was anchored too close to the channel.

Q Do you agree with the testimony that has been read to you by Mr. Farago and by Captain Brixen that the effect of the flood tide substantially altered the location of the Wilmington Getty?

A Only as far as north and south heading is concerned. But while she was swinging, she could have swung right in the middle of the channel, with her stern, swinging to the flood tide.

Q Based on this testimony, the vessel anchored at the time when the tide was ebbing going out, is that right?

A No. When she was -- when the tide was changing.

Q The testimony, I believe, Captain, is that she anchored at 8.56, and that the tide changed at approximately 11.30.

A Yes.

Q Would that change your opinion, alter the location of the Wilmington Getty, and cause her to swing?

A She would swing and naturally swing to the tide,

and the bow would be in the place where the stern was.

Q And the stern of her swing would depend on the scope of her anchor chain?

A Scope of her anchor and length of the vessel.

Q Do you have an opinion, Captain, based on all of this testimony that you have read and heard, and of the exhibits which you have examined, do you have an opinion as to the judgment and seamanship of the decision by the Getty master to anchor in that particular spot as indicated on these charts? Do you have an opinion?

A Yes, I have.

Q What is your opinion?

A In my opinion the captain of the Getty used very poor judgment of anchoring where he did, because he could have gone and should have gone --

THE COURT: When he did or where he did?

THE WITNESS: Where he did, sir.

A He should have gone further up into the anchorage, thereby leaving the approaches to the anchorage free and clear to any other vessel that would like to use the anchorage at the same time or a little bit late.

Q What in your opinion should he have done when he turned out of the channel?

A When he turned out of the channel he should have

gone further up north into the proper anchorage and anchored there, and so not to hinder anybody else coming into the anchorage.

Q Will you indicate to his Honor on this chart the areas where in your judgment the Wilmington Getty could have anchored in a more safe position?

A Yes, sir.

THE COURT: How do you want him to mark it?

THE WITNESS: Your Honor --

THE COURT: No, I asked counsel. How do you want him to mark this spot, In answer to your question?

Q Will you indicate SA with arrow for safe anchorage?

MR. BOWLES: May I make a suggestion? This chart is a very small scale. We have another chart.

THE COURT: Take the larger one if you have one.

MR. BOWLES: Which shows the boundaries of the anchorage areas and so on.

THE COURT: Do you want to take the other one, Mr. Mahoney? Where is it?

MR. BOWLES: This is Exhibit No. 2, your Honor.

THE COURT: Now we are referring to Exhibit 2.

Q Captain, before testifying today, did you also have an opportunity to look at this particular chart?

A Yes, I have.

Q Will you indicate to his Honor with arrows -- and I suggest they be marked with SA for safe anchorage -- the areas where in your opinion the Wilmington Getty could have been more safely anchored?

A I would suggest the anchorage in this part here would be much better.

Q Mark that, please?

THE COURT: How do you want to mark it? Circle with SA in the center?

MR. MAHONEY: That would be satisfactory.

THE WITNESS: Right here?

THE COURT: Indicate the general area, not a fraction of it.

THE WITNESS: Yes (complying).

THE COURT: SA has now been marked adjacent to this marked circle.

Is that right, Mr. Witness?

THE WITNESS: Yes, si

Q Now I will show you another similar chart, which is Exhibit 21 of the same general area, and ask you if you have seen this particular chart before today.

A Yes, I have.

Q This is the chart that was in use on the Ponce

de Leon. Let me point out to you, Captain, this area of these marks, which from the testimony indicate the eventual anchorage of the Ponce de Leon after this collision. I ask you if that area in your opinion would have been a safer anchorage for the Wilmington Getty.

A Much safer.

Q Would you point out the particular area that you are referring to?

THE COURT: Mark it somehow.

A That area here.

Q Mark it, please, sir, with a circle and again the letters SA.

THE COURT: SA No. 2, it better be.

Q SA No. 2.

THE COURT: Have you got it so marked, SA No. 2? We are getting into various safe anchorage contentions here.

THE WITNESS: So.

Q There has been, Captain, an exhibit marked here No. 14, which is a notice to mariners and which advised that Anchorage 25 was closed for dredging on the date in question. Have you seen this record before?

A Yes, I have.

MR. MAHONEY: From the testimony of the officers of both vessels, I think counsel would agree that this

witness just did not understand the question at that time. I would stipulate it probably is, but I just don't know.

THE COURT: All right, it is stipulated that it probably is intended for --

MR. MAHONEY: May I reread that question, please?

THE COURT: Yes.

Q This question was addressed to Mr. Farago, Captain:

"Q Let me ask you this. Generally if the Wilmington Getty were on finished with engines, can you tell me how much time it would take in an emergency situation for the engine room to get up power?

"A We've gone from finished with engines to first bell in 15 minutes.

"Q And what about from standby engines?

"A Standby engines is instantaneous. I mean standby engines are power now."

The other question we have already read.

MR. MAHONEY: Now at the bottom of page 48, Mr. Bowles.

Q "Q And how long a period of time would it take for example, if you were on standby engines, that the engine room is ready to answer bells and you rang up emergency full stern, under normal situations, routine

operating procedures, how long would it take for the engine room to answer that bell?

"A If the engines were on standby?

"Q Standby, that's right.

"A They would give you emergency full astern."

You have read that testimony before, Captain?

A Yes, I have.

Q And heard me read it to you now. Do you agree with Mr. Farago's opinions with respect to the difference in engine response on standby engines and finished with engines?

A Yes, I do.

MR. BOWLES: Your Honor, this is perhaps not a meaningful question, because he has not apparently considered all the evidence on the subject. I would object to the hypothetical on that qround.

The captain of the ship, Captain Brixen --

THE COURT: You may ask him would his answer be different if such-and-such facts were added to the question. Let us leave that.

Q In particular, Captain, you have heard Mr. Farago testify that finished with engines to first bell would take about 15 minutes.

MR. BOWLES: Objection, your Honor. That is

not the testimony of the witness. He said that at times it has taken that much time.

THE COURT: I am going to declare a little recess. See if you can adjust this during the recess.

(Recess.)

THE COURT: Did you amend your question satisfactorily?

MR. MAHONEY: I am not sure I understood the objection.

MR. BOWLES: I am sorry, we did not discuss it on the break, your Honor.

THE COURT: Do you want to amend it, Counsel?

MR. BOWLES: What is the last question?

(Question read.)

MR. BOWLES: Your Honor, the answer on page 48 of Mr. Farago's deposition stated, "We've gone from finished with engines to first bell in 15 minutes".

THE COURT: I think you had better amend it. Objection to the form is sustained.

MR. BOWLES: Your Honor, there is also a further point which I mentioned before, that is, that the captain of the Wilmington Getty testified at his deposition on page 12 that they were on a situation where they could get power up within three to five minutes.

THE COURT: I don't mind that.

MR. BOWLES: On this occasion.

THE COURT: He can still ask this witness a suitable question.

BY MR. MAHONEY:

Q Captain, let me ask you this. From your knowledge of the circumstances as they existed on this occasion --

THE COURT: From what, sir? From the testimony?

Q -- from the testimony of Mr. Farago and from the other testimony which you have read regarding the circumstances, what in your opinion would be the length of time it would take the Wilmington Getty to go from finished with engines to the first bell?

MR. BOWLES: I am sorry. I don't see how this witness could possibly answer it unless he refers to the testimony given. How can he give an opinion on it?

THE COURT: Counselor, if I may say so, assume to the effect that so-and-so. Assume so-and-so, as stated by such-and-such a witness.

Q Assuming, as you have read and heard, Captain, that the Wilmington Getty was on finished with engines on the occasion in question, in your opinion under those circumstances, under the circumstances described by Mr. Farago, how long would it have taken the Wilmington Getty to go from

finished with engines to first bell?

MR. BOWLES: Your Honor, I object.

THE COURT: Objection?

MR. BOWLES: I object, your Honor.

THE COURT: Overruled. We have got to get to it some time.

A I would judge it between 10 and 15 minutes.

Q How long in your opinion under the same circumstances would it have taken the vessel to obtain power if the engines were on standby?

A Instantaneous response.

Q Do you have an opinion, Captain, as to whether the Wilmington Getty should have had her engines on standby under the circumstances that existed in this case, bearing in mind the congested location of her anchorage and the fog conditions which existed? Do you have an opinion as to whether the engines should have been left on standby under these conditions?

THE COURT: In other words, whether it was good practice to do it?

THE WITNESS: Yes, I have.

Q What is your opinion, sir?

A My opinion is the captain made a great error in judgment by ringing off the engine after anchoring, in the

prevailing weather conditions, plus the dangerous cargo that she carried.

THE COURT: What about the cargo?

THE WITNESS: The dangerous cargo. She carried a load of gasoline, your Honor.

THE COURT: Is that in the record?

MR. MAHONEY: Yes, it is.

THE WITNESS: And in those circumstances she definitely should have been left on standby engines.

Q What could those in charge of the Wilmington Getty have done to avoid this collision if the engines had been on standby?

A Well, the only thing they have to do is to put on full astern and drag the anchor. That is the fastest thing.

THE COURT: And get out of the way?

THE WITNESS: And get out of the way. At least drift back 20 or 30 feet.

Q You have seen, Captain, the photographs --

THE COURT: Are these the ones that were marked, the damage photographs?

MR. MAHONEY: They indicate the point of contact, is what I am interested in.

THE COURT: All right.

Q Plaintiff's Exhibit 13 (handing). Would you examine those photographs for us, Captain?

THE COURT: What is the question about that? Have you examined them, Captain?

THE WITNESS: Yes, sir, I have.

THE COURT: What is the question?

Q After having examined these photographs, Captain, how far back would the Wilmington Getty have to have moved, in your opinion, to have avoided this collision?

A I would say between 15 and 20 feet.

THE COURT: How much?

THE WITNESS: Between 15 and 20 feet, maybe even less.

THE COURT: All right. Between 20 and 50 feet?

THE WITNESS: Between 15 and 20 feet.

THE COURT: 15 and 20 feet. All right.

MR. MAHONEY: May I have Captain Brixen's testimony, please.

Q With respect to the point of contact, Captain, I ask you to consider this testimony by Mr. Farago on page 23, line 17:

"Q Did you observe how -- did the Ponce de Leon thereafter strike the WilmingtonGetty?

"A Yes. She first struck the anchor chain

and then she struck the bow."

Captain, in view of that testimony and these photographs, can you tell us, in your opinion, if the vessels had gone full astern prior to the collision would the collision have been avoided?

A Definitely, yes.

Q Have you ever personally experienced a similar situation where you used full astern when your vessel was anchored under similar circumstances as described in this suit?

A Yes, I have.

Q What was the experience that took place at that time?

A The other vessel that was going too close to us cleared us by a narrow margin but she cleared us.

Q How long did it take to effect this maneuver, in your experience?

A The engines, if they are engines on standby, they are standing on a maneuvering position, and as soon as you give them a jingle astern and another jingle to give it everything they have, in seconds we start moving astern.

THE COURT: Anything else. Counselor, on direct?

Q One final subject, Captain, and I refer you to the testimony of Captain Brixen, which is Exhibit 10,

Plaintiff's Exhibit 10, on page 23, on the bottom of the page, line 21:

"Q Captain, you mention that the vessel was on finish with engines after she anchored.

"A That is the normal --

"Q Do you ever put the engines on standby engine when anchored in fog?"

The answer on top of page 24:

"A Yes, if you are what you consider in a dangerous position.

"Q Did you consider this to be a dangerous position?

"A I did not."

Do you agree or disagree with that opinion expressed by Captain Brixen with respect to the dangerous position of the Wilmington Getty?

A I definitely disagree with him.

Q What is your opinion?

A My opinion is that he should have gone a proper anchorage, left the engine on standby, instead of securing it, and kept the engineers who are supposed to be down below when the ship is maneuvering, stay there.

Q In your opinion, was the Wilmington Getty anchored in a dangerous position?

A Definitely so, because she was too close to the channel, right in the fairway where people make a turn after Buoy 18, and there is no way for them to go. She was lying there in the way of everyone else.

Q In your opinion, considering the testimony that Mr. Farago had the Ponce de Leon on radar, visual radar observation, for five minutes, did he have time to take evasive action with respect to the anchor chain?

A Definitely yes. He should have hollered to the bosun to release the brake and let it drift back.

Q And would he have had time to move from the course of the Ponce de Leon if the engines had been on standby?

A Yes, sir.

Q Within that five-minute span.

A Yes, sir, definitely yes.

MR. MAHONEY: That is all the questions I have.

THE COURT: Cross-examination.

rkbr 1 Dervin-cross

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. BOWLES:

Q Do you have a pilot's license for New York harbor?

A No.

Q You submitted some minutes on direct examination, Captain Dervin, concerning the Wilmington Getty. Did you consider the testimony of her captain that her engines were on a situation where they could get power within three to five minutes; did you consider that?

A I consider it is very unlikely because in my experience in all those years --

Q Excuse me.

THE COURT: He said he considered it very unlikely. Very unlikely they could come up in three to five minutes?

THE WITNESS: Yes. It is an older ship and even newer ships it takes time for the engineer to get down there and start, not raising steam, but raising vacuum and activate the engine.

Q Is that your opinion, your assumption, that the engine was completely shut down?

A Yes, from the engineer.

rkbr 2 Dervin-cross

Q But that was not the testimony of the captain?

A The captain said finished with engines. That means that engineers are no longer required in engine room except for one man that is there, the oiler.

Q You don't know the actual conditions in the Wilmington Getty at that time?

A No, I do not.

Q You still dispute the captain, he said he could get his power on three to five minutes?

A I strongly doubt it.

Q Captain, you can have various stages of readiness on board ships in the engine room?

A Finish with engine is only one finish with engine.

Q It depends on the precise instructions given by the captain to the engineer?

A I didn't read any instructions from the captain.

Q The captain did say he would have power in three to five minutes, is that correct?

A That is what he said.

Q At page 12 of his deposition?

A Yes, but I strongly doubt it.

THE COURT: That is in your deposition, counselor.

Q Captain, in your 28 years as sailing as master, did you have some instructions in the use of radar?

rkbr 3 Dervin-cross

A Yes.

Q When did you last go to sea?

A 1972.

Q Radar training and an endorsement on your license was required at that time, is that correct?

A Yes, sir.

Q Are you familiar with using radar in fog, then?

A Yes.

Q You are familiar with the rules of the road in fog?

A Yes, sir.

Q The fact of having radar and /or radio, do not modify your duties under the rules, do they?

A You are right.

Q You must go at a moderate sppeed at all times?

A Not all times.

MR. BOWLES: In fog, your Honor.

THE COURT: Reframe your question.

Q In fog, even though you have radar and radio, you are required to go at a moderate speed?

A Yes, sir.

Q That is a speed in which you could stop in time to avoid collision with another vessel?

A Yes, but may I say something. With the modern

92



technique and modern fast moving and large ships, those rules unfortunately are not always in effect in a ship because if one goes up the channel and there is not only one ship that goes up the channel, there are several ships following each other and if somebody starts moving at 2 or 3 or 4 knots because the weather is bad, everybody will be at a standstill.

Q Are you saying just because someone else goes at an excessive speed, something immoderate, you have to do it also?

A No,you don't, but it is the common practice.

Q It is not used under the rules?

THE COURT: I don't think your question is clear.

Q Going at an excessive speed in fog because someone else is doing it, that is not justified under the rules?

A It depends on what you consider excessive speed.

Q Suppose the visability is such that on a ship such as the Ponce De Leon you could barely see your own bow 350 feet from the bridge and visibility is described as zero. What would you consider to be a moderate speed?

THE COURT: Is this a speculative question?

MR. BOWLES: No.

Q For a ship such as the Ponce De Leon in fog?

A A speed which gives her enough steerageway and enough power to navigate.

rkbr 5 Dervin-cross

Q Would you have any estimate of what that might be?

A It depends on the conditions.

THE COURT: What do you mean what it might be?

Q What the speed might be.

A Ebb tide is one speed, flood tide is another speed. If you have a cross wind, it is a third speed. You cannot really pinpoint it. Sometimes you go 7, 8, 9, 10 knots in order to keep yourself in a position.

Q Here on the conditions of the day of the collision, we had only a half knot of flood current --

THE COURT: What is your question?

MR. BOWLES: I am trying to state the conditions to him.

THE COURT: Then it is an assumption. Assume so and so.

Q Assume you are proceeding up Ambrose Channel in condition of light wind, dense fog and approximately a half knot floor current. What would be the lowest safe speed that you would proceed at?

THE COURT: The lowest speed?

MR. BOWLES: Safe speed, moderate speed.

THE COURT: I don't see much sense to that question.

rkbr 6 Dervin-cross

MR. MAHONEY: The witness has to know a great much more as to the characteristics of the vessel.

THE COURT: Sustained as to form.

Q In the conditions described, would you go at 11 knots?

A All depends on the ship.

Q Could you stop such a ship --

THE COURT: What is such a ship? I don't know what you are talking about.

Q Could the Ponce De Leon have been stopped within 350 feet at around 11 knots?

A With her horsepower? It is possible. It could be. Again, this is something that I am guessing at.

Q Did you know the testimony of the captain of the Ponce De Leon where he testified he could not stop in the distance of visibility after he visually sighted the Wilmington Getty?

MR. MAHONEY: Excuse me. I would like to note an objection. I think counsel is getting far afield on cross examination. The direct examination of this witness was confined to the activities of the Wilmington Getty and I think you are going beyond the bounds of proper cross examination when you question this witness with respect to incidents happening before that. I think

notice to mariners was not in the possession of either vessel at the time of the occurrence.

MR. BOWLES: That is correct.

THE COURT: That is so stipulated.

Q Captain, being aware of the notice to mariners, which was not within the knowledge of the officers of either vessel, would the existence of this notice change your testimony in any respect concerning the areas which you considered to be a safe anchorage?

A No, sir.

THE COURT: Change his testimony or his opinion?

Q Change your opinion regarding the safety of these areas which you have marked as safe anchorages.

A No. In my opinion --

THE COURT: I don't understand quite the effect of this question. Can you reframe it at all to possibly clarify it a little?

Q Considering the fact, Captain, that this notice to mariners had in effect advised those in command of vessels that the anchorage area was closed fordredging and considering also, which is in the record, that neither mariner knew of that notice --

THE COURT: Now you are asking him a hypothetical question as to whether, if he had known it, it would alter

his opinion about the location of safe areas?

MR. MAHONEY: No, your Honor.

THE COURT: What do you say it is?

MR. MAHONEY: What I am attempting to elicit is the captain's opinion as to the safety of these anchorage areas, even with the knowledge that this notice to mariners had been published.

Q Do you understand my question, Captain?

THE COURT: I don't quite understand it.

Q Let me try to rephrase it, if I may.

Captain, bearing in mind that a notice to mariners had been published closing the anchorage area because of dredging, does the publication of that notice to mariners have any effect in your opinion regarding the safety of the areas which you have indicated on these charts?

A I would consider the situation that happened that morning. I would have gone into anchorage anyway, because afterwards you cannot speak to the dredge and tell him, "Look, I am in difficulties and have to anchor, and do you mind if I do so". You just go in there and anchor then.

Q So your opinion of the characteristics of these areas is unchanged?

A Absolutely unchanged.

Q Captain, you have already told us that you have read the deposition and testimony of Mr. Farago, the third officer --

THE COURT: Of which vessel?

Q -- of the Wilmington Getty.

With the Court's permission, I would like to specifically call your attention to certain testimony by Mr. Farago, on page 53.

"Q Mr. Farago, you mentioned that once you observed the Ponce de Leon making a right turn, you contacted her and said you were at anchor and you continued to observe her constantly until the point of collision on your radar, is that correct?

"A That's correct.

"Q And you ascertained from what you observed on the radar that she was going to pass clear of you and that there would be no collision?

"A (Nodding head indicating yes.)

"Q Now, this proved to be an error, didn't it? It was a collision, she did not pass clear?

"A It was an error on his part.

"Q Mr. Farago, let's assume that in your evaluation of the situation that you saw a collision and that the Ponce de Leon, in evaluating the radar,

was coming at you on a collision course, what would you have done?

"A I had already done all I could possibly do."

On page 54, please:

"Q This is from at 1308, when you said" --

MR. BOWLES: I would suggest you read the further answer prior to that. I would ask that you do, please.

MR. MAHONEY: I don't see where that is.

MR. BOWLES: At the bottom of page 53.

MR. MAHONEY: Oh, yes, a continuation.

MR. BOWLES: The witness had stated, "I had already done all I could possibly do.

"MR. BOWLES: Well, he's asking you for a hypothetical situation, Mr. Farago."

MR. MAHONEY: Yes, it was an interjection by counsel, and the answer:

"THE WITNESS: Yes. In a limited time, there was nothing that I could possibly have done, nothing.

"Q This is from at 1308, when you said you observed that the Ponce de Leon was in a --

"A When I sighted the Ponce de Leon.

"Q On radar or visually?

"A Visually."

There was an interjection or a question by Mr. Bowles:

"MR. BOWLES: What time was 1308?

"THE WITNESS: That's when I ascertained that this vessel was the Ponce de Leon."

On the top of page 55:

"Q When she turned right on radar?

"A That's right.

"Q And you considered her at that point to be --

"A A menace."

Captain, on page 56 I would like you to consider this testimony by Mr. Farago, question on line 5, page 56.

MR. BOWLES: I would again suggest that the prior question should be included in that, for clarity.

MR. MAHONEY: All right, I have no objection.

At the bottom of page 55:

"Q Mr. Farago, if at 1308, when you just said that you considered the Ponce de Leon to be a menace to you, if she were coming straight at you on a collision course, what could you have done in that space of five minutes to have avoided a collision?

"A She wasn't coming straight at me.

"Q I realize that. I'm asking if you had evaluated the situation at that time and considered

that the -- you considered her a menace already, but if you had considered that the Ponce de Leon was coming directly at you and it was going to strike you, what could you have done from 1308 to 1313, the point of collision, to avoid" --

THE COURT: The time of the collision.

MR. MAHONEY: That is what it should have been. But it is "the point of collision". I am assuming it was the time of the collision.

Q -- "to avoid that collision?

"THE WITNESS: I could have immediately let the chain run.

"Q What would this have done?

"A The flood tide would have pushed us astern.

"Q And this would have taken about two minutes?

"A I would say, but" -- the next sentence is not relevant.

Just one more question and answer on this particular point, Captain.

On page 42, question in the middle of the page:

"Q Were you keeping a plot of any of the vessels that you observed on the radar, a manual plot?

"A No.

"Q Everything was visual?

"A Everything was visual.

"Q Any plotting or observations that you were making" --

MR. BOWLES: Excuse me, before you go on to that, clarify what he meant by "visual". He did state that.

MR. MAHONEY: There is an interjection by Mr. Bowles:

"MR. BOWLES: Referring to the radar, visual on radar?

"Q Referring to the radar.

"A Visual radar.

"Q Any plotting or observations that you were making were all done mentally?

"A Mentally on the radar.

"Q You didn't use a marking pencil or anything to track vessels on the radar?

"A No.

"Q Is it standard procedure to do that?

"A Yes, it is."

Captain, do you agree or disagree with Mr. Farago's testimony that he could have released the anchor

chain in two minutes?

A I agree with that. Even less.

Q Do you consider from the testimony that you have heard that these vessels were on a collision course from the time the Ponce de Leon left the channel?

A According to the testimony of that Mr. Farago, yes.

THE COURT: That is your opinion?

THE WITNESS: That is my opinion. That is what he said too.

MR. BOWLES: Your Honor, the witness, Mr. Farago, said he thought the vessel was going to pass clear, based on his observations.

THE COURT: Well, this witness differs, then.

Q Captain, in that context I would like to read into the record and for your consideration additional testimony by Mr. Farago in Defendants' Exhibit B, which is the transcript of the Coast Guard hearing.

MR. BOWLES: What page?

MR. MAHONEY: This is on page 15.

MR. BOWLES: Would you wait one moment, please?

MR. MAHONEY: Yes, sir.

(Pause.)

Q Page 15, and this is addressed to Mr. Farago by

the Coast Guard:

"Q When did you become aware that a risk of collision existed?

"A When the Ponce de Leon passed Buoy 18 and turned right."

MR. BOWLES: I am sorry, where are you?

MR. MAHONEY: This is on page 15 of the excerpt relating to the testimony of Mr. Farago, the bottom of page 15, in the middle of the page.

MR. BOWLES: I see. I am sorry.

Q "Q Now, further, Captain, in Exhibit A, Defendants' Exhibit A, which is the transcript of the testimony of Captain Brixen, on page 3, and I read you this excerpt from Captain Brixen's testimony:

"'At approximately 1308, an inbound vessel was observed on the radar apparently on a collision course after said vessel had passed Ambrose Buoy No. 18.'"

Have you read that testimony?

A Yes, I have.

MR. BOWLES: Excuse me. To be meanginful, I think the remainder of that statement ought to be included here, concerning the radio communications between Ponce de Leon and the Wilmington Getty.

THE COURT: All right, read it.

MR. MAHONEY: It is a very long statement. I will read whatever --

MR. BOWLES: I will read it, your Honor.

THE COURT: No, it is not a question of that kind. If it should be a part of the question, let Mr. Mahoney read it.

MR. MAHONEY: I don't think it is relevant to this particular point, but I will read it, your Honor.

THE COURT: All right, read it anyway.

Q "A call was out on UHF Channel 13, identifying this vessel and stating this vessel was at anchor."

Shall I continue?

MR. BOWLES: I would ask that you continue, yes.

Q "The approaching vessel identified herself as the Ponce de Leon and stated he intended to pass inside this vessel. The Ponce de Leon's transmission was acknowledged by this vessel with the statement 'This vessel is anchored' being repeated."

Do you want me to continue?

MR. BOWLES: Yes, one more sentence.

Q "Shortly thereafter the Ponce de Leon was observed visually at approximately 200 yards close on the starboard bow, passing from starboard to port."

MR. BOWLES: Thank you.

Q Captain, in view of this testimony by Mr. Farago and Captain Brixen, in your opinion should Mr. Farago as watch officer have anticipated the risk of this collision once the Ponce de Leon turned out of the channel at Buoy 18?

A Definitely, yes.

Q Bearing in mind that there is testimony in this action that you have read and heard that the Ponce de Leon almost missed the Wilmington Getty, in your opinion would the loosing of the anchor chain, as referred to by Mr. Farago, avoid the collision that eventually took place -- would it have avoided the collision?

A In my opinion, yes.

Q Do you agree with Mr. Farago's opinion that the flood tide would have moved the Wilmington Getty back from the location where the collision took place?

A Yes, it would.

Q May I ask you, Captain, to explain to the Court, in somewhat different context, what is meant by engines being on standby?

A When a ship anchors and leaves the engines on standby, that would be the engines would be ready for instantaneous maneuvers.

Q What does it mean to state that the vessel was

finished with engines?

A When a vessel is finished with engines, then the bridge rings the engines off, or the engine room, and they secure the engine. And it takes them quite a long time in order to activate them again.

THE COURT: That is similar with an automobile as to whether the engine is in gear or not, or the apparatus is in gear or not, isn't it?

THE WITNESS: Except that in steam vessels that engaging the engine doesn't take instantaneously as it does in a car.

THE COURT: It takes longer?

THE WITNESS: It takes much longer, yes, sir.

Q On page 27 of Mr. Farago's testimony, Captain, I ask you to give your attention to this particular testimony addressed to Mr. Farago:

"Q Do you know whether the" --

MR. BOWLES: Lines, please?

MR. MAHONEY: I am sorry. On page 27, line 12.

Q "Q Do you know whether the engines -- what position the engine telegraph was in when you came on board the bridge, when you came up to the bridge?

"A Finished with engines.

"Q Is this standard operating procedure on the Getty when you anchored?

"A Yes, yes, it is.

"Q Is this also the same procedure when you are anchored in fog?

"A That's what we were referring to."

THE COURT: What does that mean, "finished with engines"?

THE WITNESS: Well, sir, when a ship comes to anchor and the chain is fixed up, they turn off the engine. So apparently that is the end of the voyage or tne end of the maneuver.

THE COURT: The engine is not revolving?

THE WITNESS: No, sir, the engine is absolutely stopped. Well, the shaft is revolving, but --

THE COURT: It is not in gear, in other words?

THE WITNESS: No, sir. You put in the jacking gear in order to turn the propeller over.

THE COURT: All right.

Q On page 28 of Mr. Farago's testimony, at the top of the page, he was asked this question:

"Q All right. Let me ask you another question, rephrase it. Do you ever have the situation routinely where the engines are placed on

standby engines when you are at anchor?

"A If we expect an immediate departure or where the engines are liable to an emergency, they are put on standby."

And on the same subject, on page 46, line 17:

"Q Mr. Farago, are there any emergency procedures that are to be followed on board the Wilmington Getty?

"A No, there aren't any emergency -- I mean like if you wanted power right now, there would be -- if you are finished with engines, it takes so much time to get power. I mean it isn't instantaneously.

"Q How much time does it take?"

And there was an interjection by counsel.

MR. BOWLES: I would like that read, please.

MR. MAHONEY: All right.

Q "MR. BOWLES: You have to take circumstances, Mr. Barra. State some conditions and perhaps a meaningful answer can be given. If you want to know on this occasion how long it would take to get up power, why don't you ask that question? But your question is too broad and vague to be answered as it is. What conditions are you talking about?

"Q Mr. Farago, on this occasion, with the

vessel at anchor in fog under the situation that you were in at this particular time, how long would it take for the engine room to get up power?

"A Well, I think you would have to ask the engineers.

"Q In other words, you as the deck officer don't know?

"A No, because I don't understand the engine room procedures for getting up power. I mean they may be doing something that I'm completely -- no.

"Q Let me ask you this. Generally if the Getty were on standby engines, can you tell me how much time it would take in an emergency situation for the engine room to get up power?

"A We've gone from finished with engines to first bell in 15 minutes.

"Q And what about from standpoint engines?

"A Standby engines is instantaneous. I mean standby engines are power now.

"Q In other words, if you were on standby engines, the engine room has power on?"

And there was an interjection by Mr. Bowles:

"I don't understand that.

"MR. BARRA: Well, he said instantaneous.

"MR. BOWLES: What do you mean by power on?

"Q If you had standby engines and the engine room answers back, standby engines, does that mean that the engine room is ready to receive bells to move the vessel?

"A That's correct."

MR. MAHONEY: Excuse me, your Honor, Mr. Barra pointed out an apparent typographical error in the transcript which may be significant.

MR. BOWLES: What page?

MR. MAHONEY: May I go back to the question at the bottom --

THE COURT: If you can stipulate, all right.

MR. BOWLES: What page?

MR. MAHONEY: Bottom of page 47, the question began:

"Let me ask you this. Generally if the Wilmington Getty were on standby engines", and Mr. Barra points out that that should have been "finished with engines", because of the answer. It would not be responsive otherwise. The question should be "If the Getty" --

THE COURT: Do you agree with that, Counselor?

MR. BOWLES: I don't know. Perhaps the

rkbr 7 Dervin-cross

you are trying to make him your expert.

THE COURT: Read the question.

(Read.)

THE COURT: Concretely, what is the objection to that question?

MR. MAHONEY: The direct examination of this witness was confined to his opinions of the position of the Wilmington Getty and the maneuvers of the Wilmington Getty and my position is that questions directed to him on cross examination regarding the operation of the Ponce De Leon before she left the channel is beyond the purview of his direct examination.

THE COURT: Before leaving the channel?

MR. MAHONEY: Yes.

THE COURT: Sustained.

MR. BOWLES: On that point, the witness has given certain testimony about the actions of vessels coming up the channel to that point and that is what I am leading up to.

THE COURT: I don't think it is a relevant area. That was quite a time, wasn't it, before the collision?

See also 135

MR. MAHONEY: That is right. He didn't turn out of the channel until five minutes before the collision.

rkbr 8 Dervin-cross

THE COURT: Sustained.

Q When proceeding in fog, proceeding up a channel in fog, and you observe a radar target on your bow, ahead of your bow at a distance of a mile or less, can you determine, using your radar, what that vessel is doing?

A No, sir, not immediately.

Q What do you have to do? You can learn this, can you not?

A Yes, if you have enough time.

Q If you have enough time?

A And a target ahead of you indicates something, whether she is moving, standing still or whatever she was doing.

Q You can plot this on your radar to determine the course and speed of the other vessel?

THE COURT: I don't understand that. That question is vague and uncertain. I don't know what you mean. Under what conditions do you you plot it?

MR. BOWLES: Let me phrase the question.

Q Suppose you were on the bridge of the Ponce De Leon as her captain coming inbound in conditions of fog and weather on the day of the collision and on your radar at some distance ahead, one and a half or one mile ahead, you observe a contact which you believe to be a ship. Using

rkbr 9 Dervin-cross

your radar --

THE COURT: A contact which you observe to be a ship?

Q A blip on your radar --

THE COURT: I don't know what you mean. Reframe the question so we have some definitive form of it.

Q Captain, I have asked you to assume that you are the captain of the Ponce De Leon coming inbound up Ambrose Channel in conditions of visibility and weather and tide as existing on the day of the collision and assume that you see on your radar near ahead of you a blip or a point on your scope which you understand to be a ship and my question to you is, can you plot, using your radar information, to determine from your radar and your calculations what that other contact, that ship is doing, in terms of her course and speed?

MR. MAHONEY: May I note an objection here. I believe the actual testimony at this point in the navigation of the Ponce De Leon was that the captain did not observe a single definitive blip, but a blip that was merged with the outline of another vessel proceeding ahead of him. My recollection of the testimony is that he did not see a distinct individual blip until turning out of the

rkbr 10 Dervin-cross

channel.

THE COURT: I will sustain an objection to form. It is not in accordance with the apparent facts.

MR. BOWLES: I don't believe that is the fact. At one point the captain of the Ponce De Leon stated he saw the contacts merged.

THE COURT: Where is it in the testimony? Get the page and line out.

MR. BOWLES: I can rephrase the question and go around it.

Q Captain, is it correct under the rules of the road that a vessel underway has a duty to avoid a close quarters situation with every other vessel?

THE COURT: Avoid a close quarters situation?

MR. BOWLES: Yes.

THE COURT: How near is close?

MR. MAHONEY: I don't think there are enough facts in that question to permit the witness to answer.

THE COURT: Sustained.

Q Captain Dervin, if you were proceeding up the channel on a ship such as the Ponce De Leon under the conditions existing at the day of the accident, and you had your radar in full use, would you turn out of the channel to go directly at a contact you saw 6/10 of a mile

rkbr 11

or a mile ahead of you?

MR. MAHONEY: Again, I will have to object. I don't think there is any testimony to that effect.

THE COURT: If there isn't, the question is improper.

Show me the testimony thatindicates any such thing.

MR. MAHONEY: That is a conclusion based on an inference.

MR. BOWLES: Page 22 to 25 of Captain Meade's deposition testimony.

THE COURT: Which boat was he on, that is Exhibit 16, your Honor "Then you picked up the ship later identified as the Wilmington Getty about two miles?"

THE COURT: I don't know what that means.

MR. BOWLES: Line 21, page 22 --

MR. MAHONEY: Could we not have the answer to the previous question? I think the answer should be read in as given at line 15.

MR. BOWLES: Question on line 14 "Then you picked up the ship later identified as the Getty at about two miles?

"A Well, as I see it, a vessel later identified as the Getty -- this target was practically synonymous with the Sealand vessel."

rkbr 12

THE COURT: You are taking two situations, one when it was maybe two miles ormore off and later when it is identified. It gets into a kind of whirly situation.

MR. BOWLES: The point is, at a distance of two miles, those on the Ponce De Leon picked up the radar target of the Wilmington Getty off Norton Point.

THE COURT: So what?

MR. BOWLES: They knew it was present at that time, well before the collision.

THE COURT: Do youknow where it was?

MR. BOWLES: Yes.

THE COURT: From the radar?

MR. BOWLES: They could see the radar contact and they could also see the buoys and they could see Norton's Point, the land just to the right of this contact later identified as the Wilmington Getty.

The question continues and I had to refer him to his Coast Guard testimony.

"Q When did you become aware of the Wilmington Getty?

"A I became aware of this ~~ticket~~ particular target at the extreme edge of the 2 mile -- between 1-1/2 and two miles off."

He recalled giving that testimony at the

Coast Guard.

THE COURT: That is when he was aware of the contact of the location.

MR. BOWLES: "Is it correct you sighted her between 1-1/2 and 2 miles from her?

"A I would say so."

THE COURT: That is the captain?

MR. BOWLES: Of the Ponce de Leon testifying that he sighted the Wilmington Getty.

THE COURT: Read the last question.

(Read.)

MR. MAHONEY: Your Honor, I must maintain that testimony is not in the record as I [illegible] it. The captain testified that when he turned out and first saw the Wilmington Getty, he did not know she was anchored, he thought she was a vessel underway.

THE COURT: Sustained.

MR. BOWLES: Your Honor --

THE COURT: You can't make bricks without straw. If you don't have the material you seek to insert --

MR. BOWLES: The point is --

THE COURT: I don't care what the point is. If you want to ask a question on an opinion, you have to go

rkbr 14

further than you have gone.

MR. BOWLES: Let me get to this point then.

Q Captain Dervin, assuming again that you are in the channel coming northbound and you sighted a contact at one and a half to two miles ahead of you--

THE COURT: What does a contact mean?

MR. BOWLES: Radar contact which later turned out to be the Wilmington Getty.

Q Would you watch that contact on your radarscope carefully to see what it was doing?

A Yes.

THE COURT: Immediately thereafter?

Q Immediately thereafter? In other words, as soon as you picked up an unidentified object on your radar, isn't it the proper procedure to watch that object carefully?

A At two miles in the harbor not so much.

THE COURT: Can you see the two miles and a half as to what it is doing under the conditions existing?

THE WITNESS: On the radar, you wouldn't be able to know what she is doing.

THE COURT: Objection sustained.

Q Can you do anything to determine by plotting or calculations to determine what that unidentified radar

contact is doing?

A Not in that close proximity, I don't think you can do that.

Q There isn't the time to plot or make a calculation?

A It isn't that. The distance between targets and the ship and the shore, it is not like an open sea, you know.

Q Agreed.

You would keep an eye on it? You might not plot?

A You keep an eye on every target that occurs when you are on the bridge?

MR. MAHONEY: Should it not be called to the witness' attention there were numerous other blips on the screen at the same time? It seems to me it is very relevant to what you are asking:

Q You would keep a contact on all objects on your radarscope?

A Yes, sir.

Q Assume you proceed further and you have testified that at Buoy 18, this is a place where ships frequently turn out of the channel to go to the anchorage area, is that right?

A Right.

rkbr 16 Dervin-cross

Q Assume that as you yourself approach Buoy 18 on the Ponce De Leon conditions of fog and weather existing at the time of the accident, would you keep an eye on this contact that you had previously seen on your radar?

A Keep an eye on all the contacts.

Q If you could see that contact, the Wilmington Getty on your radar when you are at Buoy 18, would you turn toward that contact if you didn't know what it was doing?

When you are at Buoy 18 you see a radar contact outside of the channel and off Norton Point. Would you turn toward that contact if you didn't know whether it was going northbound, southbound or which way it was facing?

A From the posiiton, in her position she couldn't have gone south because she would have gone aground.

Q Just looking at your radar --

THE COURT: He is trying to answer you and I suggest you allow him to answer you.

Complete your answer.

A If I had to go and anchor I wouldn't make a right turn in order to stay clear of her.

Q Would you repeat that?

A Turn my ship to the right, give her right rudder and keep my target on the port bow to keep between her and the Norton Point. That is the only thing to do.

rkbr 17 Dervin-cross

Q My question is, you don't know at the point you commence making your turn, you don't know what that particular contact is doing? You don't know whether it is stationary or going north or south?

THE COURT: He said that.

Q You are saying you would still turn toward her?

A I would turn to the right in order to pass to my port.

Q And your object would be to keep well clear of her?

A To go past her and anchor somewhere else where I can be in a safe position.

Q Your object would be to keep well clear of this contact you see?

A Yes.

Q As you are approaching this vessel, this contact that you see on your radar, what would you do to make sure you keep well clear of her?

A Just to keep to the right, to keep her to my left.

Q You would watch your radar carefully to make sure you did keep clear?

A Yes.

Q Suppose when you are a half mile away from this

rkbr 18 Dervin-cross

contact you get in radio communications with her and she tells you she is anchored, then you would have definite knowledge of what she is doing, is that correct?

A Right.

Q And the distance is a half mile and assume you are heading closer to her --

THE COURT: Whatever that means. Go on.

Q Would you continue watching your radar to make sure that you pass her?

A I certainly would.

Q If you had a half a mile distance, would you think you had enough room to turn and make sure you avoid that vessel?

A Yes, I would.

Q What are your options? Could you turn left at that point or turn right?

A We are turning right already and at slow speed in order to change from right to left, it takes a long time to meaneuver a big ship like that.

Q Do you know how long it would take the Ponce De Leon to maneuver?

MR. MAHONEY: Should you not include in your question the fact you had a flood tide that was setting down towards the Wilmington Getty? I believe there is testi-

money to that fact in the record.

MR. BOWLES: I have included all the conditions existing on that day.

THE COURT: Put the assumptions in your question. Maneuver to turn left?

MR. BOWLES: Yes.

Q Are you familiar with the characteristics of the Ponce De Leon as to her turning?

A According --

THE COURT: To the depositions?

THE WITNESS: Yes, that is about all.

Q At this point --

THE WITNESS: Yes, that is about all.

Q At this point --

THE COURT: What does that mean?

Q Captain Dervin, when your ship is approximately a half mile away fromthe Wilmington Getty and you tell her, you have a radio communication with her, she tells you she is anchored and you intend to pass inside of her, would you expect the Wilmington Getty to slack her anchor?

A I would expect somebody to call the captain and say the ship is coming close, what shall I do, if the man on the bridge doesn't know what his duties are.

Q Let us keep this point in mind. You have just

rkbr 20 Dervin-cross

informed the Wilmington Getty that you see her on th
you know she was anchored and you have told her you ar
to pass inside of her?

A Ahead of her.

Q Inside of her, between her anchor and Norton ~~at one~~ point. Would you expect her to slack her anchor right at that point?

MR. MAHONEY: Objection. There is testimony that the men on the bridge of the Wilmington Getty had reached a conclusion that the veseels were on a collision course and the question that you had addressed to the captain implies that they were safe in assuming that no collision would occur. That is contrary to the statements of both Captain Brixen who described it as a collision course and Mr. Farago that stated to the Coast Guard he determined the vessel was coming right at him and there was a risk of collision at the time he turned out of the channel.

MR. BOWLES: We are asking the witness' views on this and you should include on this that the captain of the Ponce De Leon testified at this point, when he had the radio communications with the Wilmington Getty that he was approaching close to her, he did not expect her to take any action.

Q Did you see that in the testimony?

MR. MAHONEY: I think we are being argumentative

rkbr 21 Dervin-cross

because the question is directed to the state of mind of the watch officer of the Wilmington Getty, that is what we are talking about. What was his attitude, what was his knowledge that would indicate whether or not his lack of action was reasonable or unreasonable and I think these other things are argumentative.

THE COURT: I am inclined to agree.

Suppose we recess now until 1:45.

(Luncheon recess.)

rkbr 22

AFTERNOON SESSION

1:45 p.m.

THE COURT: You may continue, Mr. Bowles.

MR. BOWLES: Before I go back to Captain Dervin on the cross examination, I would like to note at the end of the last session Mr. Mahoney made a statement that the mate on the Wilmington Getty saw there was a collision situation developing as soon as the Ponce De Leon turned out of the channel about five minutes before the collision and I submit that is an incorrect statement.

THE COURT: Can you point out the statement in the record?

MR. MAHONEY: Is that question directed to me?

THE COURT: Yes.

MR. MAHONEY: Exhibit B. This is Defendants' Exhibit B, the Coast Guard testimony of Mr. Farago. On page 15:

"Q When did you become aware of that a risk of collision existed?

"A When the Ponce De Leon passed Buoy 18 and turned right."

MR. BOWLES: Your Honor, at his deposition at page 12 --

rkbr 23

THE COURT: Is that inconsistent with something else?

MR. BOWLES: Mr. Mahoney has taken it out of context. At page 12 in his deposition --

THE COURT: Is it out of context in this Coast Guard testimony?

MR. BOWLES: The mate realized there was a problem as soon as it turned out of the channel but he didn't mean that to say --

THE COURT: How do you know what he meant to say?

MR. BOWLES: By what he subsequently said?

THE COURT: What did he subsequently say that shows he didn't mean what he said before? You are a little confusing to me.

MR. MAHONEY: I might say just in context here, the master described it as a collision course in his report.

MR. BOWLES: The Ponce De Leon did ultimately come on to a collision course but at page 22 of his deposition he was asked:

"Q After the radio communication with the Ponce De Leon, did you continue to observe her on radar?

"A Yes.

rkbr 24

"Q Did you make any determination whether she would pass clear or not?

"A Yes, I did.

"Q What did you determine from your radar?

"A From my observations on radar, which action from the point of contact, radio contact, was almost continuous and she looked like she was going to pass ahead of us."

THE COURT: You better eliminate the question and wait until you want to argue this matter afterwards. Of course you can point out inconsistent statements.

MR. BOWLES: I thought it was Mr. Mahoney's statement and I didn't want to leave that as our understand of the facts.

THE COURT: All right, you don't understand it that way, that is all. You are cross examining this captain. Please go right on and finish it up.

N I C H O L A S J. D E R V I N, resumed.

CROSS EXAMINATION (Continued)

BY MR. BOWLES:

Q Captain Dervin, if you were in the position on the Wilmington Getty at anchor at Norton Point at the time immediately prior to the collision on the day in question and you observed a radar contact approach Buoy 18 and turn right toward you or in your general direction, wouldn't

rkbr 25 Dervin-cross

the first thing you would do would be to call him on the radio and ask his intentions and tell him that you are at anchor?

A If I had such orders and if that was the customary procedure, yes.

Q That is a good procedure, isn't it?

A This I am not to judge because I don't know what kind of orders he actually had.

Q What would you do if you were in that circumstance? Would the first thing you would do would be to call that other vessel on the radio and warn him you were at anchor?

A I wouldn't warn him. I would just make a statement I was at anchor.

Q Suppose he comes back and tells you that he is going to keep clear of you at that point, what would you do next, would you just continue to watch the radar and watch to see what he is doing?

A Not only would I watch the radar, I would prepare myself for any kind of evasive action if I had the opportunity.

Q If you had the opportunity, that is the key point, isn't it, how much time you may have?

A That is as fast as your brain works.

Q Once you tell him you are at anchor and he says

rkbr 26 Dervin-cross

he is going to keep clear of you to pass inside of you, you would be somewhat more relaxed than if you thought he was going to continue right at you?

MR. MAHONEY: I have to object to the form of that question.

THE COURT: It is speculative. Sustained.

Q If after your radio communication with the approaching vessel and he tells you that he is going to keep clear of you and you looked at your radar, observed him continuously on the radar and it appeared he was going to pass clear of you, what would you do then, would you at that point start veering your chain or not?

THE COURT: Do you understand the question?

THE WITNESS: I do, your Honor.

THE COURT: Can you answer it?

A I would certainly be alert to any kind of danger because a man is coming. Either the man on the bridge is standing in the middle of the ship where the radar is and there is 400 feet ahead him, the bow, which is not on target on the radar. If he sees this target is coming towards you --

Q To pass clear ahead?

THE COURT: Let him finish his answer.

A He assumes he is going to be clear of him, but

rkbr 27 Dervin-cross

an assumption is the same like blowing a danger signal. That doesn't relieve him from taking precautions.

Q Suppose you were in that position and you observe on your radar the other vessel approaching is going to pass clear ahead of you. My question is then, would you at that point immediately veer your chain or not?

MR. MAHONEY: Excuse me.

THE COURT: I think it is speculative. You have gone far enough on speculative ventures.

MR. BOWLES: Your Honor --

THE COURT: I have ruled, that is it. I will not get into any argument about it. It is unnecessary.

Q As that approaching contact is coming in, if you believe he might have danger of collision with you, any avoiding action you take, what choices would you have first?

A It all depends what kind of means I have.

Q You have your anchor and engine.

A Engine is dead.

Q Okay.

A Anchor, release the brake and slack the chain.

Q For that action to be effective --

THE COURT: Which action?

MR. BOWLES: To slack the chain.

rkbr 28 Dervin-cross

Q That would mean that your vessel would move backward if there was a current pushing you backward?

A Right.

THE COURT: That has all been gone over several times.

MR. BOWLES: One more question on this line.

THE COURT: If there is no objection, try it.

Q Whether that action of releasing the chain is going to be effective or not in avoiding the collision depends upon what the other vessel does, isn't that true?

A Not necessarily. You are doing your best to protect yourself.

Q Suppose at the time he is coming from your starboard bow and you decide to move backwards. Suppose he turns left, wouldn't that put you into collision?

A He is going right.

Q How do you know that?

A The testimony says so.

Q You are on the ship --

THE COURT: We have gone on for enough on this area, what I believe is a blind alley.

Q If you take any action in avoiding her, you need time, is that correct?

THE COURT: You have gone all over that.

rkbr 29 Dervin-cross

MR. BOWLES: It was gone over on direct, not on cross.

THE COURT: Answer that question. He has already said yes, of course, on direct at least.

A As long as it makes you go out on the wing of the bridge to holler to let go the chain.

Q And it would take a man some time to release the poles? Do you know what the poles on the anchor are?

A Yes. There was only one anchor so one pole.

Q Then what?

A Release the brake.

Q That takes a man to turn a wheel or a lever?

A I don't know what they had. I think there is a wheel.

Q It takes time to take these actions?

THE COURT: Yes, he has admitted it.

A A minute.

Q At least a minute?

A I would say a minute. It all depends how proficient he is.

Q Captain Dervin, what is going to determine the rate at which you move backwards?

THE COURT: I don't know about that question. That is rather speculative too. I think you have gone far

enough along this line. I think you have had a fair degree of cross examination.

MR. BOWLES: Am I cut off on this line?

THE COURT: Yes. I think you have had enough.

Q You testified you have read Captain Meade's deposition?

A Yes, sir.

Q Do you recall the testimony given at page 100, line 7 and we are referring to the captain of the Ponce De Leon testifying concerning the Wilmington Getty.

"Isn't that correct, Captain, if she is stationary, she cannot help avoid the collision?

"A I say this, at this point when I was first going on radar, I didn't know she was at anchor. If she was in fact underway, it wouldn't have been my duty alone to avoid it.

"Q If she is at anchor, it was your duty alone to avoid collision?

"A No. No.

"Q There is nothing she could do to avoid collision?

"A No question about it."

MR. MAHONEY: I have two separate objections.

THE COURT: Probably two good ones.

MR. MAHONEY: The question at line 13 asking this

witness if it was his duty alone to avoid collision. I think that is objectionable because it calls for a legal conclusion on the part of the witness.

THE COURT: Sustained.

MR. MAHONEY: Secondly, with respect to the entire line of questioning, this definitely is out of context because the preceding questions indicate we are talking at the point of contact where there was no longer any evasive action to be taken by the Wilmington Getty. We are not talking about this five-minute period during which we contend I could have done something to avoid the collision.

THE COURT: Sustained as to that feature.

Q Captain, page 45 of Captain Meade's testimony, line 9:

"Q Had you ascertained her position, that is, the Wilmington Getty?

"A I could see her quite clearly on radar at this point.

"Q And you knew she was anchored?

"A At this point I did, yes.

"Q You knew she wasn't going to move to get out of the way since she was anchored?

"A She was anchored.

rkbr 32 Dervin-cross

"Q She could not move in a short time?

"A No."

Would you agree with that?

MR. MAHONEY: He has to know at which point. I don't see how he could answer that question without knowing the point in time to which that line of question refers.

THE COURT: Sustained. You are going up all sorts of speculative enterprises.

MR. BOWLES: The point Captain Meade was referring to was the point after the radio communication.

THE COURT: But your question didn't include that. You take some of these things in part then you modify them in your thought and you give them and it is not a definite question.

Q Captain, would you refer to the chart Exhibit 21, please?

A Yes.

Q Would you refer to the mark on the chart, note the words collision and the words 1314 under this and this is the Ponce De Leon's chart.

Would you agree with me that the position marked "collision" on the chart is approximately 375 yards outside of the channel limits in this location?

rkbr 33 Dervin-cross

A The channel limit is up to here only. This is a free going around. There is no channel there any more.

THE COURT: Read the question and would you try to answer just as it is before it is amended.

(Question read.)

A There aren't any channel limits in this vicinity. The channel limit is only up to the Buoy 18. After this I would say it is free for all. You can go anywhere as long as you get into the Narrows in a proper position. On the left side you have shallow water. On the right side --

THE COURT: Would you read the question once more and, Captain, see if you can answer it directly.

(Question read.)

A I do not.

Q Captain, for vessels proceeding up to the Verrazano Bridge, whatever course they are on on passing Buoy 18, isn't it customary and usual for them to maintain that course up to a point past where the Wilmington Getty was anchored?

A Not necessarily. It all depends on the conditions.

Q But vessels going up and down the channel would maintain such a course basically?

A Basically, yes.

rkbr 34 Dervin-cross

Q So that as far as any vessel proceeding up and down the channel, the Wilmington Getty was at least 375 yards outside of the channel limits as extended past Buoy 18?

A That is an assumption. I wouldn't agree with that.

Q Assuming any vessel proceeding up and down the channel to go under the Verrazano Bridge, the Wilmington Getty would be well outside the vessel with respect to such vesels?

A Again, I don't agree. You are not talking about a vessel going to the Verrazano Bridge, but the vessel wanted to get into that anchorage here.

Q Only with respect to that vessel, but other vessels going to the Verrazano Bridge would pass well fair --

A I have no knowledge of that.

Q If the Wilmington Getty is in this position marked Collision, she is certainly not obstructing traffic going up and down the channel, however?

MR. MAHONEY: I would have to object to his testimony that there is no channel and the relevancy of its proximity to that area escapes me because we are talking about vessels proceeding right out of the channel at Buoy 18.

THE COURT: Objection sustained.

rkbr 35 Dervin-cross

Q Did you testify on your direct examination, Captain Dervin that if the Wilmington Getty backed on her engines immediately, she could have avoided collision? Did you so testify?

A I did so.

Q If she still has her anchor chain out, you testified she should back down even with her anchor chain out, is that correct?

A I don't seem to understand your question.

Q Did you testify on direct examination by Mr. Mahoney that you would back down on your engines and pull your anchor free?

A Not free, drag it.

Q In other words, the anchor would have to move physically over the ground?

A Yes.

THE COURT: Over the bottom.

Q If you pulled back on your ship withyour anchor down, what would happen to your anchor chain?

A Nothing. She should be straight ahead of you.

Q That is right.

THE COURT: I am glad you agree with something here. There is no need to make comments about his answer and I suggest you omit it.

MR. BOWLES: I am sorry, your Honor. I wasn't intending to be offensive.

Q In the situation with the vessel at anchor, not using her engines, where is her anchor chain normally, doesn't it lead down from the vessel and out to the anchor?

A It depends on the tide.

Q If you pull back on your anchor, isn't that chain going to rise up and become taut out in front of you where the anchor goes through the chainholes on the bow out to the anchor?

A Right.

Q If you did that with a vessel coming in front of you, isn't it possible that vessel would collide with your chain now pulled out in front of you?

A Not if the engine is pulling full astern. The anchor is dragging on the bottom and the flukes are jumping over the ground.

Q Assuming there is time for you to get sufficient weigh to break your anchor loose?

A That is practically instantaneous.

THE COURT: You have gone up almost every speculative tree in the neighborhood. Can't you get along without any more of it? I think it is not particularly relevant or helpful to either side, not to you nor to defendant.

rkbr 37 Dervin-cross

MR. BOWLES: No further questions.

THE COURT: Redirect?

MR. MAHONEY: No redirect.

THE COURT: The captain may go? Neither side wishes him to stay?

MR. MAHONEY: I request the captain be asked to stay because I understand there will be a rebuttal witness.

THE COURT: Perhaps you better stay.

MR. MAHONEY: That is the defendants' case.

THE COURT: You may or may not make any motions but if you do, I will have to reserve on them.

MR. MAHONEY: I would like it deemed made.

THE COURT: It is deemed a motion is made to dismiss the case and decision reserved.

Do you wish to put on a witness?

MR. BOWLES: Yes. Gilbert Fonda, a radar expert.

G I L B E R T F O N D A, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOWLES:

Q Mr. Fonda, what is your profession?

A Radar consultant.

rkbr 38 Fonda-direct

Q By whom are you employed?

A Self-employed.

Q What company, sir?

A Operational Radar Service.

THE COURT: Is that your company?

THE WITNESS: Right, sir.

Q Are you the sole owner of it?

THE WITNESS: That is correct.

Q How long have you been with operational radar services?

A It started in 1949.

Q Have you been at that business continually since that time?

A That is right, sir.

THE COURT: You mean since 1949?

MR. BOWLES: Yes, your Honor.

Q What is the business of Operational Radar Service?

A We train -- in the past we have trained deck officers in the use of radar, plotting techniques, proper operational techniques of the controls.

THE COURT: Have you manufactured radar machines?

THE WITNESS: No, sir. It is entirely an operational concern.

rkbr 39 Fonda-direct

THE COURT: You were concerned not with manufacturing but with operational matters?

THE WITNESS: That is correct.

Q Would you describe the type of service you offer?

A We usually put a man aboard a ship and he travels either to nearby foreign or another east coast port or from the west coast out to Hawaii and during the trip he spends the major part of his time in the wheelhouse with the officers and any contacts that are picked up, that is, radar contacts, they are shown how to change course if the situation demands it.

THE COURT: Your man, does he attempt to tell them what navigational steps to take?

THE WITNESS: I am talking about primarily the information that is available from the radar.

THE COURT: What do you mean by that, exactly? What is he supposed to do about that?

THE WITNESS: Let's say you have a contact up ahead and after tracking it you see it is going to come too close, then they will know how much to change course to have it come off at a safe range.

THE COURT: Isn't that a real navigational matter?

THE WITNESS: Navigation and radar are hinged

rkbr 40 Fonda-direct

together.

THE COURT: How much is radar and how much is navigational? It seems to me it is largely navigational.

THE WITNESS: The scope plotting has to be done on the radar set. The two overlap, there is no question about it.

Q Mr. Fonda, have you ridden ships yourself to give such training?

A Many times.

Q How many ships, approximately?

A Approximately 100.

Q Prior to forming or joining operational radar services, would you describe your formal education and further experiences?

A I went to Princeton with a mechanical engineering degree. Then I became involved in the power squadron where I ran a course in navigation for them for a couple of years. Then I went into the Navy.

THE COURT: A power squadron is a course for novices as to the operation of vessels?

THE WITNESS: Yes. They have a four year course that starts with the elements then it goes on through celestial navigation.

A After that I was in the Navy as a reserve

officer.

THE COURT: What did you do as a reserve officer in the Navy?

THE WITNESS: I was first qualified as an air navigator and taught air navigation. Then I was qualified as a top deck watch stander. As a matter of fact I was the first reserve officer assigned to the heavy carrier Midway and as such I had to be qualified for top deck watch.

THE COURT: Anything else you did?

THE WITNESS: That came prior to the formation of operational radar services after I left the service.

Q While in the Navy, did yo have any experiences with the use of radar on board ships?

A Yes, sir.

Q Would you describe that briefly, please?

A They had six different sets on the Midway.

THE COURT: What did you do about it?

THE WITNESS: As assistant navigator on the ship, I was in total responsibility of the navigation because the navigator was a commander, I was a lieutenant commander at the time, had the responsibility for many other things. Education. He had to take care of the library and entertainment and various other things so the assistant navigator actually became the navigator of the ship.

rkbr 42 Fonda-direct

That was my job and as such I had to be completely familiar with the operation of all the radar sets and one of them was an experimental set which was the only one in existence at that time. It was called the SX. It was an experimental set and I had to be familiar with the operation of this and the interpretation of it and in connection with the CIC, Combat Intelligence Center where all the contacts were kept on one large maneuvering board and they in turn notified the fire control units. It was quite a complicated setup, but my own bailiwick was the navigation of the ship and the use of these radars and interpretation of them and the loran.

Q On board thir ship --

THE COURT: Which ship?

Q On board the Midway, did you have occasions to use the radars to make plots of other ships to determine their course, speed and any other information?

A Yes, sir, many times.

Q In your experiences with operational radar services in riding ships, have you had occasion to use radars to determine navigational information such as the course and speed of other ships?

A Many, many times.

Q Would you describe briefly how the course and speed

rkbr 43 Fonda-direct

of another ship is determined by the use of your own radar?

THE COURT: This is generally, not any specific place or time or ships?

MR. BOWLES: Generally first.

A To determine the course and speed of another ship, of course today --

THE COURT: Is this today or prior to the date of this collision? I think you better put him back on the track. We aren't concerned with any improvements or substantial alterations in practice after the date of this accident.

Q Have there been any substantial alterations in the practice of the use of radar immediately before and immediately after the time of the accident in May of 1973?

A There have been alterations in that many of these determinations of radar today are done by computer.

Q WE are not talking about computers, but the situation --

A In answer to your question, I would say that. If you are talking about normal determination of course of another ship, you always are involved in any other ship you see, if you want to get the information as to its course and speed or closest point of approach. Normally the closest

rkbr 44 Fonda-direct

point of approach is the item which is of most importance to you so many times you don't get into determining the course and speed of another ship but you want to know how close it is going to come and it is a simple thing to keep track of this as long as the ships involved maintain their courses and speed. As soon as either ship changes its course and speed, the whole situation becomes so complex.

THE COURT: It becomes very uncertain?

THE WITNESS: Yes.

A You really can't forecast it but as long as the ships maintain course and speed that are involved in this situation, we are talking about two ships --

THE COURT: That is enough.

Q What are some of the limitations on the use of radar?

A Tne radar is unlike a TV set in that it doesn't give you a picture. It has distortions and it has distortions --

THE COURT: Due to distance?

THE WITNESS: Distance is its long suit. The most accurate reading you get from a radar set is distance. The shortest is the bearing. The bearings can be off much more readily.

Q Does it take some time to make a determination

rkbr 45 Fonda-direct

of the closest point of approach of another vessel?

A Yes, sir, what you have to do is to track it for a long enough period of time.

THE COURT: How does that give you its location?

THE WITNESS: Because you are talking the positions of this indication on the radarscope and tracking it down and as long as the ships maintain its course and speed, all of these will go down on a straight line.

THE COURT: As long as the ship doesn't change its course.

THE WITNESS: Right, or the other ship doesn't. They will all go at a straight line and move at a straight line and move at a constant speed across the scope face.

Q What is the minimum amount of time you would need to get a reasonably accurate plot?

THE COURT: How can he answer that with all the differing circumstances?

MR. BOWLES: I submit there is an approximation of time mariners would like to have.

THE COURT: I don't understand that to be in your question.

Q Is there a minimum amount of time in general circumstances in navigation including in a harbor as to obtaining meaningful, accurate information from a radar plot?

rkbr 46 Fonda-direct

A I would have to answer that question in this way. If you have an overtaking situation, it would take much longer, for instance, to get a decent plot than you would if you were in a meeting situation because the movement of the pip across the scope face would be much slower when you are overtaking and what you need is a distance across the scope face to determine what is going to happen.

Q Assume a ship such as the Ponce De Leon is entering New York Harbor and proceeding up Ambrose Channel and sights a radar contact at 1-1/2 miles to 2 miles ahead on her starboard bow and that the persons on watch on the bridge do not know what this radar contact or pip is doing. Are there any procedures for determining what that contact is doing in terms of its course, speed and closest point of approach?

A I would say actually --

THE COURT: Just yes or no, or you don't know.

A I don't think that can be answered yes or no. There are too many conditions that have to be stipulated.

THE COURT: That answers it. You couldn't answer it without prescribed conditions.

Q Presuming that the people on watch on board the Ponce De Leon are aware of these conditions -- what conditions should they be aware of, first?

rkbr 47 Fonda-direct

MR. MAHONEY: I interrupt and ask at what point, what stage are we directing this question?

MR. BOWLES: The Ponce De Leon coming up Ambrose Channel and sighting a contact.

THE COURT: There was a rather vague reference.

MR. MAHONEY: May I ask this direct question. Are you directing a question to the witness with respect to the time prior to the vessel, the Ponce De Leon leaving the channel at Buoy 18?

MR. BOWLES: Yes.

MR. MAHONEY: In that event I must press an objection. This gentleman is a rebuttal witness and as I understand his limitation, he is to testify only on something brought out in the defendants' direct case. The defendants made no reference whatsoever to any course of action prior to the turning right at Buoy 18.

THE COURT: And I don't think it is relevant anyway. Sustained.

There has to be an end to evidentiary rulings and I am not going to stop and have argument about every single evidentiary ruling.

Q At the point where the Ponce De Leon leaves the channel at Buoy 18 and she is approximately one mile or 9/10 of a mile from a radar contact such as the Wilmington

rkbr 48 Fonda-direct

Getty, in that period of time, which is approximately five minutes, is there anything that the Ponce De Leon could do to see what the Wilmington Getty was doing and/or to make sure that they pass clear of a ship such as the Wilmington Getty?

A Yes. One of the things would be to watch the relative position of the pip with respect to land return like Norton Point. If it stayed perfectly steady, you had a ship that was stationary.

THE COURT: Suppose there is no stationary point.

MR. BOWLES: There was in this instance, your Honor.

THE COURT: Ask your next question.

Q Using the radar, is there any way that those on the Ponce De Leon could have insured that they kept clear of the Wilmington Getty?

A Yes.

Q What should they do, in your opinion?

A In my opinion, they should have set up in advance a circle around these targets which they feel are areas within which they should not come, maybe a quarter of a mile or a half mile, something like that, and they should be sure that the pip motion line will not

rkbr 49 Fonda-direct

come within that area.

THE COURT: What would that involve, doing what you just suggested?

Q How would you do that?

A It would be simply a matter of trial and error at that stage of time. You would take a course --

THE COURT: Is that the way to operate radar, you have trial and error on a voyage through a harbor?

MR. MAHONEY: I press my obection in this respect. I submit this is not proper rebuttal. Any characteristic testimony here describing the conduct of the Ponce De Leon is not properrebuttal. The defendants' direct case was confined to the operation of the Wilmington Getty.

THE COURT: And this relates to what?

MR. MAHONEY: This question was directed to what those aboard the Ponce De Leon should have done. I think it is improper rebuttal.

THE COURT: I am inclined to think so technically. However, I will take it.

Q Let us go back one step, Mr. Fonda.

At a point where a ship such as the Ponce De Leon reaches Buoy 18 on the chart, if there is a contact ahead on which those on the Ponce De Leon do not know exactly what she is doing, would you recommend that the

rkbr 50 Fonda-direct

Ponce De Leon turn toward that contact?

A I certainly wouldn't.

Q Why not?

MR. MAHONEY: Excuse me. I submit this question presupposes operational experience and ability on the part of Mr. Fonda and as I understand his qualifications, his expertise is limited to the use of radar. I have heard no qualriciations that indicate he has ever conned a vessel, has ever had actual operational experience.

THE COURT: Sustained. This man is no navigator.

MR. BOWLES: May I inquire of the witness?

THE COURT: Inquire what?

MR. BOWLES: Whether Mr. Fonda has any operational experience as a conning officer. He said he was a navigator on the Midway and did have certain navigational experience at that time.

A I was in charge of the watch officers, actually.

Q Did you act as a watch officer yourself?

A Yes. I was a little on the bridge when we were in close quarters.

Q Were you supervising the navigation?

A I wasn't doing the conning at that time. Usually the captain or a pilot would be conning.

rkbr 51 Fonda-direct

Q What would you be doing?

A Watching everything that was being done.

THE COURT: Was there a pilot there every time with you?

THE WITNESS: I was up there many times without a pilot.

THE COURT: Was there a navigational officer there?

THE WITNESS: I was it.

MR. MAHONEY: My objection is not directed to his expertise as far as navigation is concerned. I submit there is a critical difference between a technician who is qualified in the use of navigational equipment and an operations officer who actually cons a vessel and I have heard nothing to indicate that this witness has ever operated a vessel and made the type of decision that we are talking about here. I think his testimony must be limited to the proper use of radar equipment, not to decisions made when you make your turns, your speeds and things of that nature. I think there is a sharp difference.

THE COURT: It is rather doubtful if he is qualified about navigational decisions, counselor.

MR. BOWLES: I think we can bring that out very quickly.

rkbr 52 Fonda-direct

Q Have you had occasions, Mr. Fonda, where you were in situations and navigating harbors and making decisions as to what course to take with respect to other vessels in the harbor or in the vicinity?

A Not in the harbors themselves, but outside of the harbors, yes.

THE COURT: Out on the open sea?

THE WITNESS: Coastwise, things like that.

THE COURT: That is different.

MR. MAHONEY: It is quite different.

Q In your experience in riding ships, have you been in positions to make recommendations in harbors to officers you were training?

A Yes, I have.

THE COURT: What do you mean?

MR. BOWLES: The witness has previously testified he has ridden on ships training officers on board that ship in the proper use of radar and I asked him if he was in that situation in harbors.

THE COURT: Read the last question.

(Read.)

THE COURT: Where was that?

THE WITNESS: Coming out of Boston Harbor one evening in an absolutely peasoup fog and the captain had to

rkbr 53 Fonda-direct

make an 8 o'clock start and he asked me to act on the radar and give him such information as I thought expedient and telling him what the situation was.

THE COURT: Did you at that time direct what navigational steps should be taken to the man on the deck or in the eingine room?

THE WITNESS: The captain had the con and I was on the radar.

THE COURT: You told him what the radar showed?

THE WITNESS: That I thought he ought to go more right or more left.

Q What did you tell the captain in that situation?

A I would tell him there was a situation dead ahead he should come a little bit right. It was a very touchy situation, one of the worst I have ever been in. I don't really think we should have left Boston and so told him, even though it was not my province, but he was the skipper of the ship.

MR. MAHONEY: That is exactly my point.

THE COURT: That is just about it. If it wasn't his duty to do so, I don't know how you are going to qualify him as a navigational officer.

MR. BOWLES: He did make recommendations to the captain.

rkbr 54 Fonda-direct

THE COURT: It might be questioned as to what the validity and what the value of those were.

Q Mr. Fonda, in that situation where you were advising the captain --

THE COURT: I don't know what question you are going to ask him but I don't know how you could get across the qualification barrier. Go ahead and try if you want to. It is rather repetitious.

Q Mr. Fonda, in that situation where you were making recommendations to the captain and you mentioned, for example, you had a contact ahead and you recommended going right or left, did the captain follow those recommendations?

A Absolutely.

THE COURT: That doesn't mean anything.

Q For example, if there is a contact dead ahead, why would you tell him to go right or left?

THE COURT: Because he didn't want him to strike it. That is self-evident. Primary.

MR. BOWLES: That is the point we are going back to.

THE COURT: It is no point at all in my mind which justifies your attempt to qualify this man on navigation, with due respect to him assuming a slightly different situation, that you are on the bridge of the Wilmington

something missing

rkbr 55 Fonda-direct

Getty at anchor some 375 yards after the channel line as extended and you observe a radar contact of a vessel in the vicinity of Buoy 18 turning out of the channel toward you. What would you do at that time?

MR. MAHONEY: I must object to that. There is no evidence that this gentleman is qualified to talk about the operation of deck equipment, the engine room. He doesn't know how long it would take to release the anchor. He has not been qualified as a deck officer. I think his qualifications, although eminent, are limited to a very specific navigational aide which is only one part of a decision that an officer must make.

THE COURT: I will have to sustain the objection. You have gone up and down several hills. Now you want to go up another mountain?

MR. BOWLES: I am referring to radar.

THE COURT: State your question and stick to radar.

Q Mr. Fonda, again assuming that situation that you are at anchor on a ship such as the Wilmington Getty and by radar you observe a vessel turning out of the channel. Can a determination be made using radar as to whether this contact coming toward you will pass ahead or not?

A Oh, yes. I would say it could be determined.

rkbr 56 Fonda-direct

Q The accuracy of that determination would depend on what?

A The constancy of the speed of the oncoming target and the constancy of course. If it is changing course and speed, the radar indications can be very confusing and misleading.

Q We are assuming something different than the situation testified to by the mate on the Wilmington Getty. He testified that he observed the vessel and assumed it was going to pass ahead of him, but assume a slightly different state of facts, assume that he observed a radar contact coming toward him, could he tell accurately enough from the radar whether that vessel might pass ahead of him, astern of him or hit him?

THE COURT: Can you answer that or is that dependent on some unknown factors?

A He can probably tell whether it is going to hit him or come awfully, awfully close.

Q Could he tell with sufficent accuracy and know whethe he should let go of his chain or go forward, if he had the capability?

A I don't think so.

MR. BOWLES: No questions.

MR. MAHONEY: No questions.

rkbr 57

MR. BOWLES: WE rest.

MR. MAHONEY: We rest.

THE COURT: It is solely a question of when to get the papers in.

I will fix time for papers after the transcript is ready. I expect to have the papers from the plaintiff with all of the proposed findings of fact and conclusions of law under the paper which you have been given in two weeks thereafter and within one week after that, I expect to receive the defendants' brief, and you will -- that is, you will serve defense counsel with your plaintiff's papers and he will again within one week serve you with his papers and they will be filed within the same time and I don't know whether you will have more than the one copoy of the exhibits but if you have only one copy, you will each arrange for the other to use those exhibits.

Any questions.

MR. BOWLES: I have none.

MR. MAHONEY: No.

THE COURT: You have the request from the Court as to post-trial papers.

MR. BOWLES: Yes.

MR. MAHONEY: Yes.

THE COURT: Thank you, gentlemen.

- - -

WITNESS INDEX

| Name | Direct | Cross | Redirect | Recross |
|---|---|---|---|---|
| Nicholas J. Dervin | 39 | 89 | | |
| Gilbert Fonda | 125 | | | |

EXHIBIT INDEX

| Plaintiff | Identification | In Evidence |
|---|---|---|
| 1 | 15 | 15 |
| 2 | 16 | 16 |
| 3,4 | | 17 |
| 5,6,7 | | 18 |
| 8 | | 19 |
| 9,10,11 | | 20 |
| 12,13 | | 21 |
| 14,15, | | 22 |
| 16,17 | | 23 |
| 18,19 | | 24 |
| 20,21,22 | | 25 |
| 23 | | 27 |
| 24,25,26 | | 28 |
| 27 | | 29 |
| 28,29,30 | | 30 |
| Defendants | | |
| A,B | | 38 |

rgsr

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

GETTY OIL COMPANY, :

Plaintiff, :

- v s - : 73 Civ. 3480

S.S. PONCE DE LEON, :

Defendant. :

----------x

DAMAGES TRIAL

B e f o r e :

HON. LAWRENCE W. PIERCE,

District Judge.

New York, New York
September 29, 1976 - 10:30 a.m.

A p p e a r a n c e s :

KIRLIN, CAMPBELL & KEATING, ESQS.,
Attorneys for plaintiff;
By: LAWRENCE J. BOWLES, ESQ., of Counsel.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, ESQS.,
Attorneys for defendant;
By: VINCENT J. BARRA, ESQ., of Counsel

7976

RHB
LJB

THE CLERK: Getty Oil v. Ponce De Leon.

MR. BOWLES: The plaintiff is ready.

MR. BARRA: The defendant is ready.

THE COURT: We have Mr. Bowles for Getty Oil and we have Mr. Barra for the S.S. Ponce DeLeon.

As I understand the status of the matter, the case was tried before Judge Levitt on the liability question. He found 80 per cent on one side, 20 per cent on the other and made a determination as to liability.

MR. BOWLES: Yes, your Honor.

THE COURT: The matter was then set down for a determination to be made as to damages and we rescheduled it for trial to today, but you have worked out the damage question and there is one remaining issue, that is what is the law that is applicable with respect to interest from the date of the loss.

MR. BOWLES: Yes, your Honor.

THE COURT: Let me hear from plaintiff's counsel, Mr. Bowles. First of all, let me hear your response to counsel's reference to the Wright case.

MR. BOWLES: Your Honor, I think one thing that is clear, the matter of granting of interest is within the discretion of the Court, the sound legal discretion of the Court and it is not to be denied on extraneous grounds,

I believe. Your Honor, the Wright case to me is an anomaly in the law which has not been followed in this Circuit. There are more recent decisions than Wright. I cite one of them, the Afran Transport case at Page 3 of my memo. There is a more recent one also, Gates Construction, which I did not cite, which mentioned Wright also in it. Your Honor, in every litigated case until appellate finality is reached, no one knows what the final situation in regard to who must pay whom and how much, so that exercising one's legal rights, contesting the case, going through the Courts has not been an impediment to granting interest, such as in the older cases, the Mannitoba case, also cited in my brief at Page 4. It went all the way up to the Supreme Court and of course no one would know until the Supreme Court's decision was rendered how the decision would come out.

The Supreme Court granted interest in that case. To simply put it on a term of we don't know who is going to get the balance makes no real sense to me, your Honor.

THE COURT: Your opponent cites an interesting view. He says applying equitable principles there should be a limit as far as interest is concerned to the extent that it is only applicable to the date of the interlocutory judment on Arpil 5th, stating that prior to the commencement

of the action there was an offer to ~~sell~~ settle this lawsuit for an amount in excess of the recovery now due to the plaintiff.

Further, that even before the Magistrate there was an offer of an amount in excess of the amount recovered after trial. He sais that insofar as interest sought, it is claimed as an item of damage and that it would be inequitable to allow that recovery where the amount involved is less than that offered before the case even came to court and even after the case came to court by virtue of an amount offered before the Magistrate. Do you want to respond to that?

MR. BOWLES: Your Honor, there were no offers of settlement before the action commenced. The action was commenced very shortly after the collision, but shortly before trial there were some offers.

THE COURT: I see. Not before the action was commenced, but before trial.

MR. BOWLES: Right. We commenced the action very promptly after the collision. Shortly before the trial there were some offers and there was an offer in front of the Magistrate which I assume, he said -- I forget the details, but he said he would recommend that at that time.

THE COURT: He takes the position that it is an

rgsr

item of damage.

MR. BOWLES: Some of the Courts have taken the position that the interest is an item of damage in the sense of something to be added to the recovery granted to make the party whole for the loss of the funds due for for an extensive period of time, but in terms of settling the case I don't think we should be prejudiced or hurt in the sense that we refused a settlement which I think in good faith we felt was totally unreasonable at the time. This was a hard fought case, your Honor.

THE COURT: Let me make that one up. How about that, Mr. Barra? Mr. Bowles is saying, in effect, that if yoiu are going to take that approach they would have been better off not to settle this case for $70,000, but rather that they should have held out for maybe a hundred, a hundred or more and they wouldn't have faced this argument.

MR. BARRA: Your Honor, they held out for a lot more than that. Their allegation all along was they were not liable in this respect. This was not before trial, this was two years ago when we had this conference before the Magistrate who heard the arguments and who suggested a settlement in the figure of $73,000.

MR. BOWLES: I don't recall that specific

offer, your Honor, but I won't dispute it.

MR. BARRA: The offer was 50 per cent of the plaintiff's provable damages, which were $146,000. Fifty per cent of that is $73,000.

THE COURT: What about the Afran case?

MR. BARRA: I have read it in the past. They did deny prejudgment interest which I think follows along with the Wright case. I think that the Wright case says that when both vessels are at fault and we determine who will owe exactly whom, we will apply interest from the date of the Court's decision. I think that that's a fair date for that, but I think in this case, your Honor, the plaintiff's basic argument, and the basic argument alleges, "With interest, I would have had the money that I expended but for your refusal and forcing me to litigate a case which now I have litigated and the Court has vindicated me and given me 'X' number of dollars." That's not the case here because they could have had their money. They could have had their money well over two years ago, both from our offer and the recommendation of the Court.

Now, it is fine for them to say that they disagreed with this and that they were reasonable in disagreeing. I think, your Honor, if this were an all or nothing situation where they disagreed wtih an offer and

the Court came in and said fine, plaintiff recovers the full amount that they are seeking, then they would be entitled to interest, but when you have a settlement, this could be a analogous to the State Court procedure where they allow a tender into court and they say that if you tender a settlement, what you think is a fair settlement, that interest will cease from that date .

In the Federal Court we don't have that type of procedure, but I think that it is a similar type of situation where not only did we make an offer, but the Court, who was trying to settle the case at the time made a recommendation and they flat out rejected this. They say we are not liable in any respect, we are entitled to a minimum of one hundred thirty something thousand dollars. I think the lowest figure they came down to was 126.

THE COURT: Let me ask you first of all do you want to work it out yourselves or do you really want me to decide one of you loses and one of you wins. You can do what you think best after that, but you have moved thise thing along to the point where you have worked out the damages aspect of it and only this fragment remains. Do you want to work that portion of it out or do you want me to decide it on a win - lose basis, one wins, one

loses?

MR. BARRA: We tried, your Honor, to work it out in order to avoid even having the Court to decide anything in this matter. I think we pretty much reached the conclusion. I made the offer that I would give judgment from the date of Judge Levitz' decision on the basis of the Wright case and on the basis that we had made offers which the Court in fact ruled where practically right on the head with Magistrate Jacobs' recommendation.

THE COURT: I will make a ruling now.

I will rule in favor of tne plaintiff. I award full interest to the plaintiff. I take the position that the Court does not believe that it should follow a course which will encumber the process of resolving cases at the trial level by having to resort to pretrial discussions concerning settlement and pretrial offers and offers which were discussed or exchanged before a Magistrate who sought to work out settlement arrangements. The Court should be free of those kinds of additional factors in determining whether or not full interest should be awarded in the exercise of its discretion. The Court finds no peculiar situation in the fact that there was mutual fault found to exist by the trial judge.

Given all of this, the Court concludes that the

plaintiff is to have interest from the date of the loss.

MR. BOWLES: Thank you very much, your Honor.

MR. BARRA: May I suggest we will submit a final judgment to be signed shortly?

THE COURT: Yes.

- - -

PLAINTIFF'S EXHIBIT 5
Deck Bell Book of the
WILMINGTON GETTY, May 10, 1973

STATES

536

| | | | |
|---|---|---|---|
| | | 2130 | L/B EA @ 3 MI'S |
| 1805 | BUOY 23" | 2112 | |
| 1811 | BUOY "1DL" | | |
| 1817 | BUOY "5L" | | 5/10/73 ARRIVING NEW YORK |
| 1821 | BUOY "7L" | 0712 | ARRIVAL |
| 1827 | BUOY "6L" | 0715<br>0737 | MANEUVERING SPEED<br>AMBROSE L/T @ 21 MI'S |
| 1836 | BUOY "4L" | 0753 | L/B "2A" |
| 1845 | BUOY "4Z" | 0800 | L/B = 4 |
| 1902 | SHIP JOHN L/H | 0807 | L/B = 6 |
| 1913 | BUOY 35" | 0817 | L/B = 10 |
| 1926 | BUOY "32" | 0822 | L/B = 14 |
| 1932 | BUOY "31" | 0824 | " |
| 1940 | CROSSLEDGE L/H | 0826 | " |
| 1945 | BUOY "27" | 0827 | X |
| 1958 | MIDCHANNEL L/H @ | 0839.5 | LD L/B = 18 |
| 2009 | L/B = 19 | 0851 | X |
| 18 | 14FT BANK L/H @ | 0854<br>0856 | "<br>LARGE TANKER |
| 2032 | L/B = 16 @ | 0854 | X |
| 31 | L/B = 14 @ | 0859 | PORT PILOT BOARDED STBD SIDE |
| 35 | L/H BREAKWATER @ | 0900 | F.W.E. |
| 2048 | = 10 L/B @ | | |
| 54 | BROWNSVILLE L/B @ | 1314 | I.B.E. |
| 2132 | L/B = 4 | 1340 | F.W.E. |

PLAINTIFF'S EXHIBIT 7
Statement of George Farace
Third Mate and Watch Officer
of the WILMINGTON GETTY

WILMINGTON GETTY
MAY 12th 1973

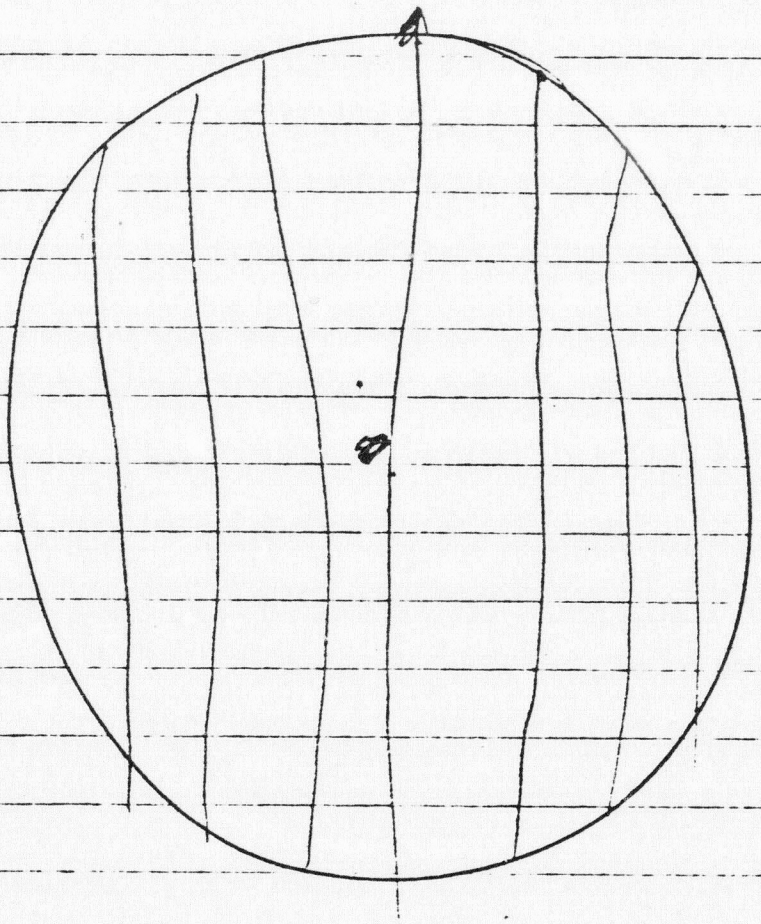
STATEMENT OF MR. G. FARACO, 3rd MATE.

On relieving watch at 1200 hrs found vessel to be anchored off Norton Pt. approx 0.65 miles off. Checked position by radar and distance. Noted that vessel had begun swing to flood tide. Found heavy fog and fog rules and regulations being complied with. Noted that there was heavy traffic in the channel. At this time I lined Radar Cursor up with Ambrose Channel Buoys and track thought around as ship swing to tide. Noting that as long as ships stayed to the right of cursor they were in the clear. At same time was also monitoring UHF Channel 13 and noted that several ships , at least 3 had trans-mitted the information that there was a vessel anchored off Norton Pt. At approx 1308 hrs noted a vessel had passed buoy 18 and turned to the right. I was at once alerted to the danger of this turn and interrupted a conversation the vessel was having with another vessel on channel 13. I contacted the vessel on channel 13 and he acknowledged call as being the "S.S. PONCE DE LEON" I informed him that I was the tanker Wilmington Getty and at anchor off Nor-tons pt. The "Ponce De Leon " acknowledged my call and at this time informed me of his intentions to pass me to the inside of me. I acknowledged and re-peated my message that I was the tanker Wilmington Getty and at anchor. Continued to track vessel , radar showing a very fine picture of vessel clear-ing slightly ahead of me . At approx 1312 hrs I visually observed vessel cl on my starboard bow at about 200 yards at an angle of approx 30 to 45 degs and slightly ahead of me. At this time I sounded the danger signal and the Master immediately came on the Bridge. At 1313 hrs I heard the "Ponce De Leon riding my anchor chain and when she was approx 2/3 of the way past made contact our bow under the forward end of her midship house. At this time the General Alarm was sounded, the engines put on stand-by and water called for on deck for possible fire. A call was put out on channel 13 that we were involved in a collision ,that we were alright and no assistance needed. the Ponce De Leon called us on radio as to needing assistance, acknowledged call. Checked vessel position after collision and found anchor holding..

As watch officer I would like to point out the excellent response of the crew to the emergency, with special note to Mr. Hunter Ch Mate, Mr. Lindsey 3rd Mate and mr. Barrows 12-4 A.B.

BEST COPY AVAILABLE

PLAINTIFF'S EXHIBIT 9
Diagram of Radar Cursor
of the WILMINGTON GETTY



PLAINTIFF'S EXHIBIT 11
U. S. Coast Guard Report
signed by Jens G. Brixen, Master
of the WILMINGTON GETTY

571

TREASURY DEPARTMENT
U.S. COAST GUARD
CG-2692 (Rev. 4-71)

# REPORT OF VESSEL CASUALTY OR ACCIDENT

Form Approved Budget Bureau No. 48-R114.5

REPORTS CONTROL SYMBOL DVI-M-17

## INSTRUCTIONS

1. An original and two copies of this form shall be submitted, without delay, to the Officer in Charge, Marine Inspection, in whose district the casualty occurred, or in whose district the vessel first arrived after such casualty.
2. If the person making the report is a licensed officer on a vessel required to be manned by such officer, he must make the report in writing and in person to the proper Marine Inspector. If because of distance it may be inconvenient for such an officer to submit the report in person, he may submit the required number of copies by mail. However, to avoid delay in investigations, it is desired that reports be submitted in person.
3. This form should be completed in full, blocks which do not apply to a particular case should be indicated as "NA". Where answers are unknown or none, they should be indicated as such. All copies should be signed.

NOTE: (1) Report all deaths and injuries, which incapacitate in excess of 72 hours, on CG-924E whether or not there was a vessel casualty.
(2) Attach separate Form CG-924E to this report for each person killed or injured and incapacitated in excess of 72 hours as a result of the vessel casualty reported herein.

TO: Officer in Charge, Marine Inspection, Port of New York

DATE SUBMITTED: 5-11-73

## I PARTICULARS OF VESSEL

| 1. NAME OF VESSEL | 2. OFFICIAL NUMBER | 3. HOME PORT | 4. NATIONALITY |
|---|---|---|---|
| Wilmington Getty | 245557 | Wilmington, Del | U.S. |

| 5. TYPE OF VESSEL (Frt., pass., tkr., etc.) | 6. PROPULSION (Steam, diesel, etc.) | 7. GROSS TONNAGE | 8. REGISTERED LENGTH OR L.O.A. |
|---|---|---|---|
| Tanker | Steam | 13659 | 555.9 |

| 9. HULL MATERIALS | 10. YEAR BUILT | 11. RADIO EQUIPMENT |
|---|---|---|
| Steel | 1944 | ☐ TRANSMIT ☒ RECEIVE ☒ VOICE ☒ CW (Key) |

| 12. (a) RADAR EQUIPPED | (b) IF YES, RADAR OPERATING AT TIME OF CASUALTY |
|---|---|
| ☒ YES ☐ NO | ☒ YES ☐ NO |

| 13. (a) CERTIFICATE OF INSPECTION ISSUED AT PORT OF | (b) DATE CERTIFICATE OF INSPECTION ISSUED |
|---|---|
| Mobile, ALA | Oct 14, 1972 |

| 14. (a) NAME OF MASTER OR PERSON IN CHARGE (Indicate which) | (b) DATE OF BIRTH | (c) LICENSED BY COAST GUARD |
|---|---|---|
| Jens G. Brixen | Jan 28, 1929 | ☒ YES ☐ NO |

| 15. (a) NAME OF PILOT (If on board at time of accident) | (b) PILOT SERVING UNDER AUTHORITY OF LICENSE ISSUED BY |
|---|---|
| Jens G. Brixen | ☒ USCG ☐ STATE ☐ FOREIGN |

| 16. (a) NAME OF OWNER(S) OPERATOR(S) OR AGENT (Indicate which) | (b) ADDRESS OF OWNER(S), OPERATOR(S), OR AGENT |
|---|---|
| Getty Oil Co. (Eastern Operations Inc) | 660 Madison Ave N.Y.C. |

## II PARTICULARS OF CASUALTY

| 17. (a) DATE OF CASUALTY | (b) TIME OF CASUALTY (Local or ...) | (c) ZONE DESCRIPTION | (d) TIME OF DAY |
|---|---|---|---|
| 5-29-73 | 1313 | E.D.S.T. | ☒ DAY ☐ NIGHT ☐ TWILIGHT |

18. LOCATION OF CASUALTY (Latitude and longitude; distance and TRUE bearing from charted object; dock; anchorage; etc.)
254 Deg.-1354 Yards from Norton Point, Coney Island L/H

| 19. BODY OF WATER (Geographical name) | 20. RULES OF THE ROAD APPLICABLE |
|---|---|
| N.Y. Harbor Gravesend Bay | ☒ INLAND ☐ GREAT LAKES ☐ WESTERN RIVERS ☐ INTERNATIONAL ☐ OTHER (Specify) |

21. (a) DID CASUALTY OCCUR WHILE UNDERWAY: ☐ YES ☒ NO

(b) IF YES, LAST PORT OF DEPARTURE

(c) IF YES, WHERE BOUND WHEN CASUALTY OCCURRED

22. (a) WEATHER CONDITIONS WHEN CASUALTY OCCURRED:
☐ CLEAR ☐ PARTLY CLOUDY ☐ OVERCAST ☒ FOG ☐ RAIN ☐ SNOW ☐ OTHER (Specify)

| (b) VISIBILITY (Miles, yds., ft., etc.) | (c) WIND DIRECTION | (d) FORCE IN KNOTS | (e) GUSTY | (f) AIR TEMPERATURE |
|---|---|---|---|---|
| 299 Yards | SE | 5 | ☐ YES ☒ NO | 63 |

| 23. (a) SEA CONDITIONS WHEN CASUALTY OCCURRED | (b) SEA WATER TEMP (If available) | (c) HEIGHT OF SEA | (d) DIRECTION OF SEA | (e) HEIGHT OF SWELL | (f) DIRECTION OF SWELL |
|---|---|---|---|---|---|
| Slight | | 1-2 Ft | SE | | |

| (a) NATURE OF CARGO (Specify) | (b) AMOUNT OF DRY CARGO (Long tons) | (c) AMOUNT OF BULK LIQUID (Long tons) | (d) AMOUNT OF DECK LOAD (Long tons) |
|---|---|---|---|
| Gasoline & # 2 Heating Oil | NONE | 22590 | NONE |

| (a) DRAFT FORWARD | (b) DRAFT AFT |
|---|---|
| 32ft 09in | 32ft 11in |

| (a) TYPES OF LIFESAVING EQUIPMENT USED, IF ANY | (b) LIVES SAVED WITH LIFESAVING EQUIPMENT | (c) LIFESAVING EQUIPMENT SATISFACTORY |
|---|---|---|
| NONE | NONE | ☐ YES ☐ NO (If no, explain in Item 24) |

PERSONAL EFFECTS ARE USED FOR IDENTIFICATION

DEFS 20

(Over)

| | CREW | PASSENGERS | OTHER (Specify) |
|---|---|---|---|
| NUMBER ON BOARD | 33 | | |
| DEAD/MISSING | None | | |
| INCAPACITATED (over 3 days) | None | | |

28 ESTIMATED LOSS DAMAGE TO YOUR VESSEL $

ESTIMATED LOSS DAMAGE TO YOUR CARGO $

ESTIMATED LOSS DAMAGE TO OTHER PROPERTY $
(Specify whether vessel, dock, bridge, etc.)

29 NATURE OF THE CASUALTY (Check one or more of the following. Give pertinent details in item 30.)

| | | | |
|---|---|---|---|
| | COLLISION WITH OTHER VESSEL(S) (Specify) | | EXPLOSION FIRE (Other) |
| | | | GROUNDING |
| | | | FOUNDER (Sinking) |
| | COLLISION WITH FLOATING OR SUBMERGED OBJECTS | | CAPSIZING WITHOUT SINKING |
| | COLLISION WITH FIXED OBJECTS (Piers, bridges, etc.) | | FLOODING SEAMPING, ETC., WITHOUT SINKING |
| | COLLISION WITH ICE | | HEAVY WEATHER DAMAGE |
| | COLLISION WITH AIDS TO NAVIGATION | | CARGO DAMAGE (No vessel damage) |
| | COLLISION (Other) | | MATERIAL FAILURE (Vessel structure) |
| | EXPLOSION/FIRE (Involving cargo) | | MATERIAL FAILURE (Engineering machinery, including main propulsion, auxiliaries, boilers, evaporators, deck machinery, electrical, etc.) |
| | EXPLOSION/FIRE (Involving vessel's fuel) | | |
| | FIRE (Vessel's structure or equipment) | | EQUIPMENT FAILURE |
| | EXPLOSION (Boiler and associated parts) | | CASUALTY NOT NAMED ABOVE |
| | EXPLOSION (Pressure vessels and compressed gas cylinders) | | |

30 DESCRIPTION OF CASUALTY (Events and circumstances leading to casualty and present when it occurred. Attach diagram and additional sheets, if necessary)

SEE ATTACHED SHEET

31 DAMAGE (Give brief general description and state if vessel is a total loss.)

Damage to Bow and Forecastle Head above 38 foot draft mark

## III ASSISTANCE AND RECOMMENDATIONS

32 AUTO ALARM TRANSMITTED BY YOUR VESSEL: ☐ YES ☒ NO

33(a) ASSISTANCE RENDERED BY STATIONS AND VESSELS (Include Coast Guard and other stations and vessels)

None

(b) OTHER ASSISTANCE RENDERED

None

34 RECOMMENDATIONS FOR CORRECTIVE SAFETY MEASURES PERTINENT TO THIS CASUALTY (Include explanation of unsatisfactory lifesaving equipment)

TITLE: Master

SIGNATURE: [signature]

S/S Wilmington Betty
May 10, 1973

Description of collision with S/S "Ponce De Leon" Vessel was at anchor 25½ Deg - 1350 Yards from Coney Is. Light, 375 Yards south of anchorage 25. It was necessary to use this anchorage due to poor visibility and all adjacent anchorages being extremely congested. Vessel was on a heading off approx. 160 Deg true with 3rd Mate , G. Farago ,Lic # 333993 on bridge and AB , John Pancoast in bow ringing prescribed fog signal. Radar was in operation on 3 mi. scale to check on vessel's position and traffic in nearby channel. At approx 1308 an inbound vessel was observed on the radar apparently on a collision course after said vessel had passed Ambrose channel L/B "19". A call was out on UHF Channel 13 identifying this vessel and stating this vessel was at anchor. The approaching vessel identified herself as the "Ponce De Leon " and stated that he intended to pass inside this vessel,"The Ponce De Leon" transmission was acknowledged by this vessel with the statement that this vessel is anchored being repeated. Shortly thereafter the " Ponce De Leon " was observed visually at approx 200 yards close on the starboard bow crossing from starboard to port. The danger signal was sounded on the whistle at which time Master came on the bridge immediately . At 1313 the "Ponce De Leon" struck this vessel a glancing blow on the bow with her port side causing damage to the bow above the waterline. The General Alarm was sounded immediately and the fire hoses forward manned and water applied immediately to the collision area to prevent fire. A call was transmitted on channel 13 that a collision had taken place in Gravesend Bay, but no assistance was requested or needed.

J. G. Brimon Master

PLAINTIFF'S EXHIBIT 12
Statement of Captain
Jens G. Brixen, Master
of the WILMINGTON GETTY

S/S Wilmington Getty
May 12th ,1973

Report of events and circumstances leading to collision with S/S " Ponce De Leon " in Gravesend bay May 11th 1973.

The S/S Wilmington Getty was on a voyage from Delaware City, Del. with a carg of # 2 heating oil and gasoline destined for Bayonne and Linden N.J. At 0712 May 10 arrival was taken off Ambrose Light and vessel proceeded up Ambrose Channel with the intention of anchoring at Stapleton awaiting tugs and tide for docking at Texaco, Bayonne at approx 1600. The visibility had been deteriorating since 0600, and after passing L/B "14" at 0837 and placing radar on 6 mile scale it was seen that Stapleton and adjacent anchorages were extremely crowded. It therefore was decided to anchor temporarily in anchorage 25 and await improving visibility and conditions at Stapleton . Several targets appeared on the radar in the anchorage and the vessel was therefore anchored at 0856 in close proximity to the southern limit of this anchorage at a position by radar shown to be 0.64 miles from Norton point . The port anchor was used with three shots in the water and at 0859 the vessel had fetched up to the ebb tide and at 0900 engine secured. Immediately after anchoring a security call was put out on UFH Channel 13 that this vessel had anchored approx 0.6 mile off Norton point and fog signal by ringing bell started.At 1125 visibility improved temporarily to be able to obtain visual bearings on Coney Is. Lt and L/B "19A." The obtained fix was less than 100 yards from the radar position and indicated the vessel was 254 deg-1350 yar from Coney Is. Lt. Radar was placed on 3 mile scale and UFH Channel 13 monitored to check on vessel's position and traffic in nearby channel. At appr 1145 vessel started to swing to flood tide. The swing was completed by 1255. At approx 1308 an inbound vessel was observed on the radar by the Mate on watch, Mr. George Farago , heading towards this vessel after having cleare L/B "18" . He therefore called the inbound-vessel on Channel 13, and the approaching vessel identified herself as the " Ponce De Leon " and Mr.

79790

Wilmington Getty
May 12th 1973

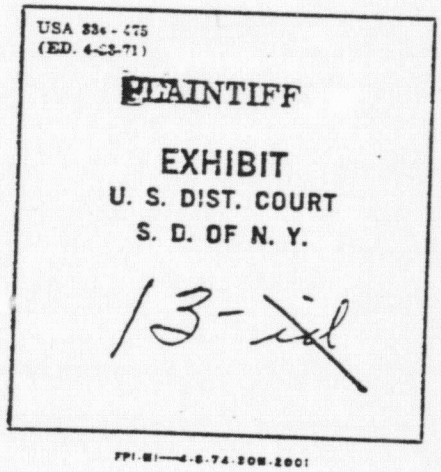
Continued

Parago informed her that this was the "Wilmington Getty" and at anchor off Norton point, The "Ponce De Leon " then informed us that she intended to pass inside this vessel. Shortly the " Ponce De Leon " was observed visually approx 200 yards close on the starboard bow crossing from starboard to port at an angle of about 45 degs. the danger signal was sounded immediately on the whistle at which time the Master came on the bridge immediately. A scraping sound was heard probably caused by the "Ponce De Leon " riding over this vessel's anchor chain and after the forward half of the "Ponce De Leon " had cleared the bow her port side at 1313 struck a glancing blow on the bow causing damage to the bow plating above the 38 ft draft mark, the forecastle deck and windlass. The General Alarm was sounded immediately, engine put on stand-by , water put on the fire mains and applied to the collision area to prevent fire. A call was transmitted on Channel 13 stating that a collision had taken place in Gravesend Bay but no assistance was requested or needed. A call was received later from the " Ponce De Leon "inquiring if this vesse was alright which was acknowledged and affirmed. Said vessel apparently proceeded to anchor nearby. At 1605 U.S.C.G. cutter "Sauk" came along side and at 1615 Lts Cole and Bird boarded for inquiries and examination. 1720 Coast Guard Personal and cutter left. At approx 2000 the same evening a message was relayed by an McAllister tugboat from the U.S.C.G. request-ing that vessel be shifted to Stapelton anchorage. At 2045 the anchor was aweigh and at 2135 anchored at Stapelton till 0248 May 11 when vessel proceeded to dock at Texaco, Bayonne where vessel was secured at 0455. At 1100 a survey was held at Bayonne with the following present. Lt.Jg Banes, U.S.C.G. - Lt.Jg Shea, U.S.C.G. - George Hoppes, A.B.S. Frank Pillat Jr. Pillat and Sweeney. - J.R. Benson U.S. Salvage Assoc.." C. Edwards U.S. Salvage Assoc.- R.R.Plumtt U.S.Salvage Assoc.- W.F. Watkings, Salvage Assoc Of London.- E. Dimmett, Salvage Assoc of London- A.T. Sperbon Port Engineer G.O.S.

J.G.Brixen

Master

PLAINTIFF'S EXHIBIT 13
Photographs of bow of the
WILMINGTON GETTY


USA 83s - 175
(ED. 4-65-71)
PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
13-Jil
FPI-81—4-8-74-20M-2001

NEG. NO. &
DATE TAKEN: 33884 MAY 14 1973

MARYLAND SHIPBUILDING & DRYDOCK COMPANY

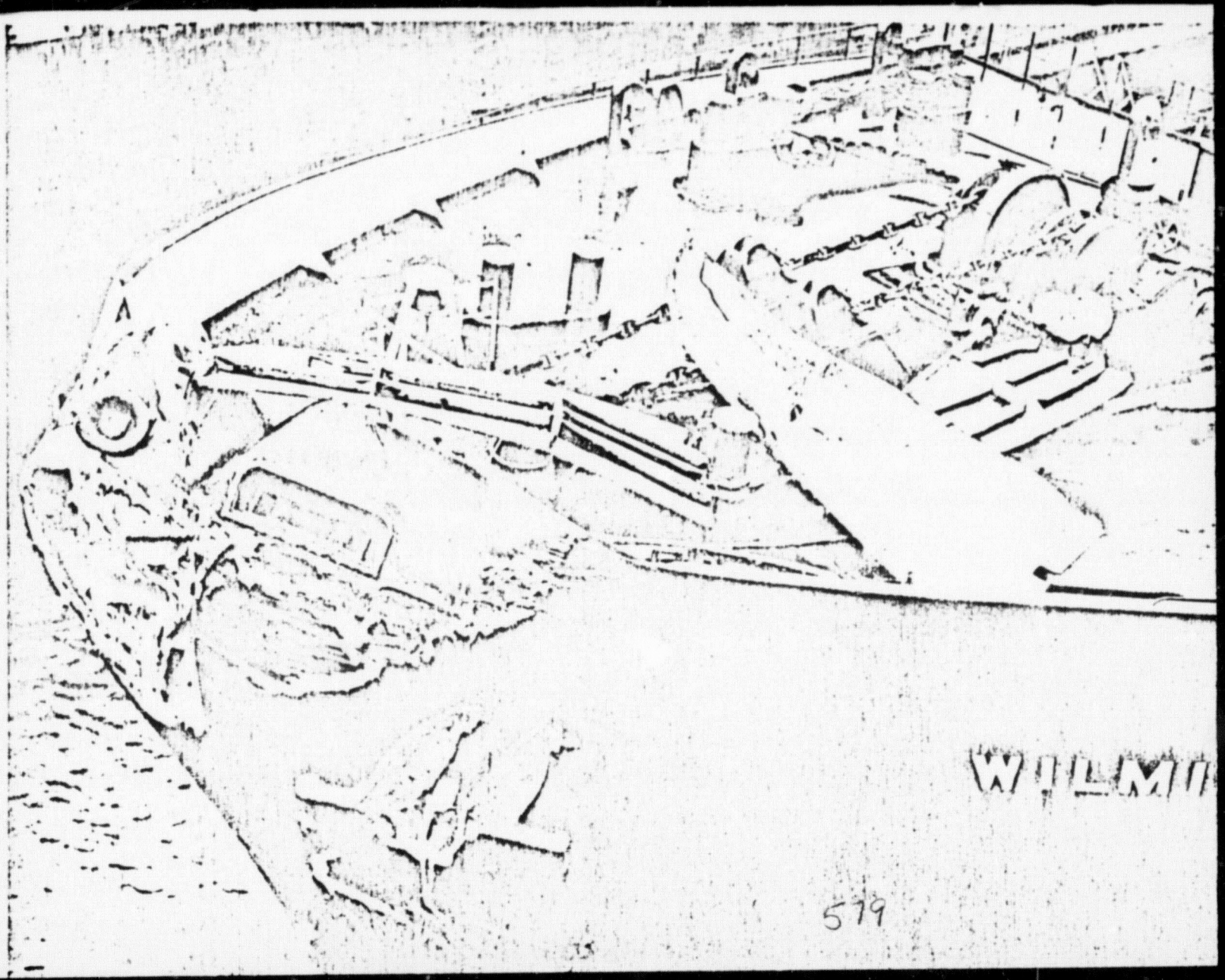
SHIP: _____

SUBJECT: _____

_____

578

PLF's 22-A
FOR IDENTIFICATION
10/10/79


WILMI

NEG. NO. & DATE TAKEN: 33888 MAY 14 1973

MARYLAND SHIPBUILDING & DRYDOCK COMPANY

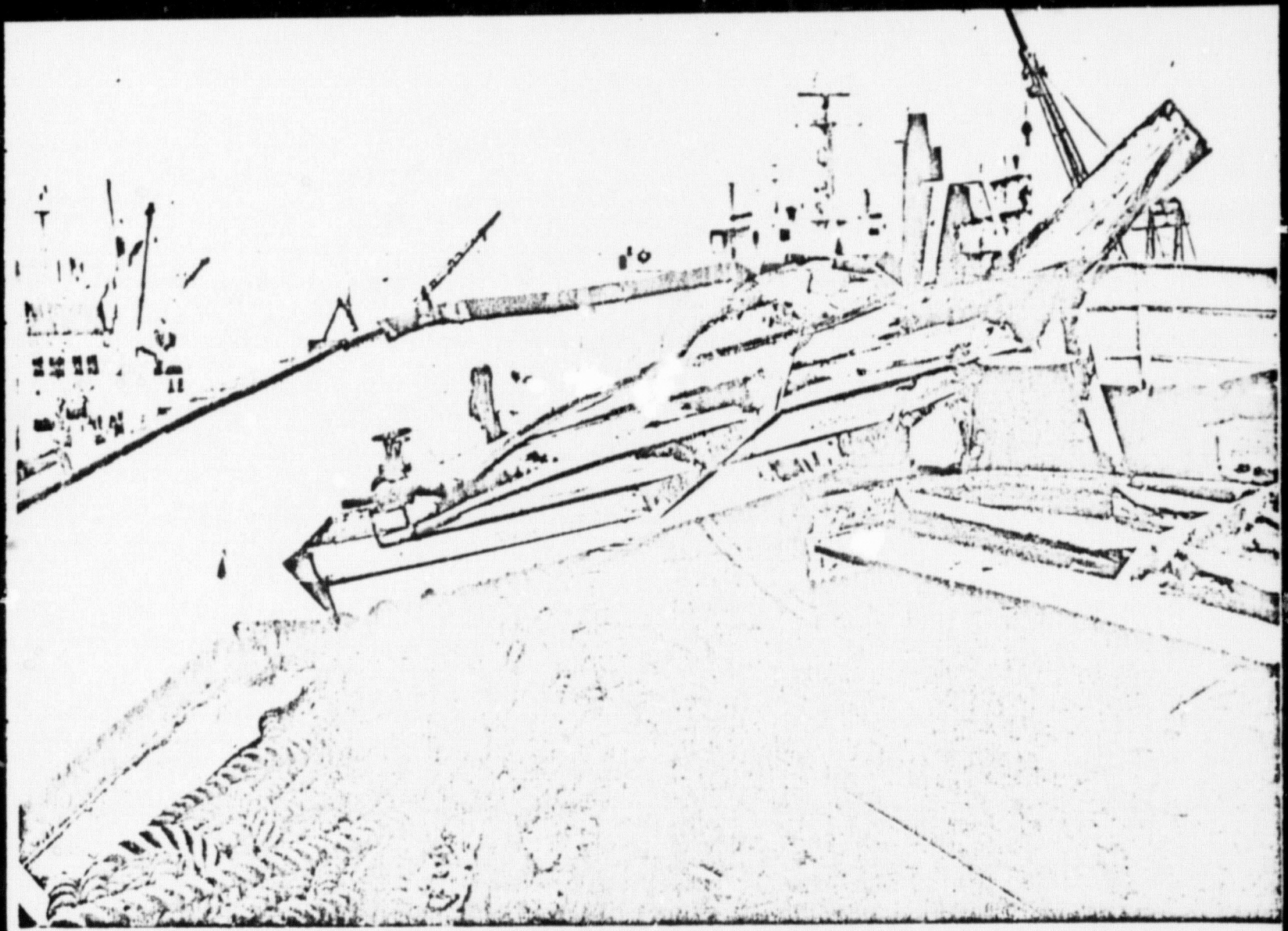
SHIP:

SUBJECT:

PLF's 22-B

10/00/74

580



5.81

NEG. NO. & 33-881 MAY 14 1973
DATE TAKEN:

MARYLAND SHIPBUILDING & DRYDOCK COMPANY

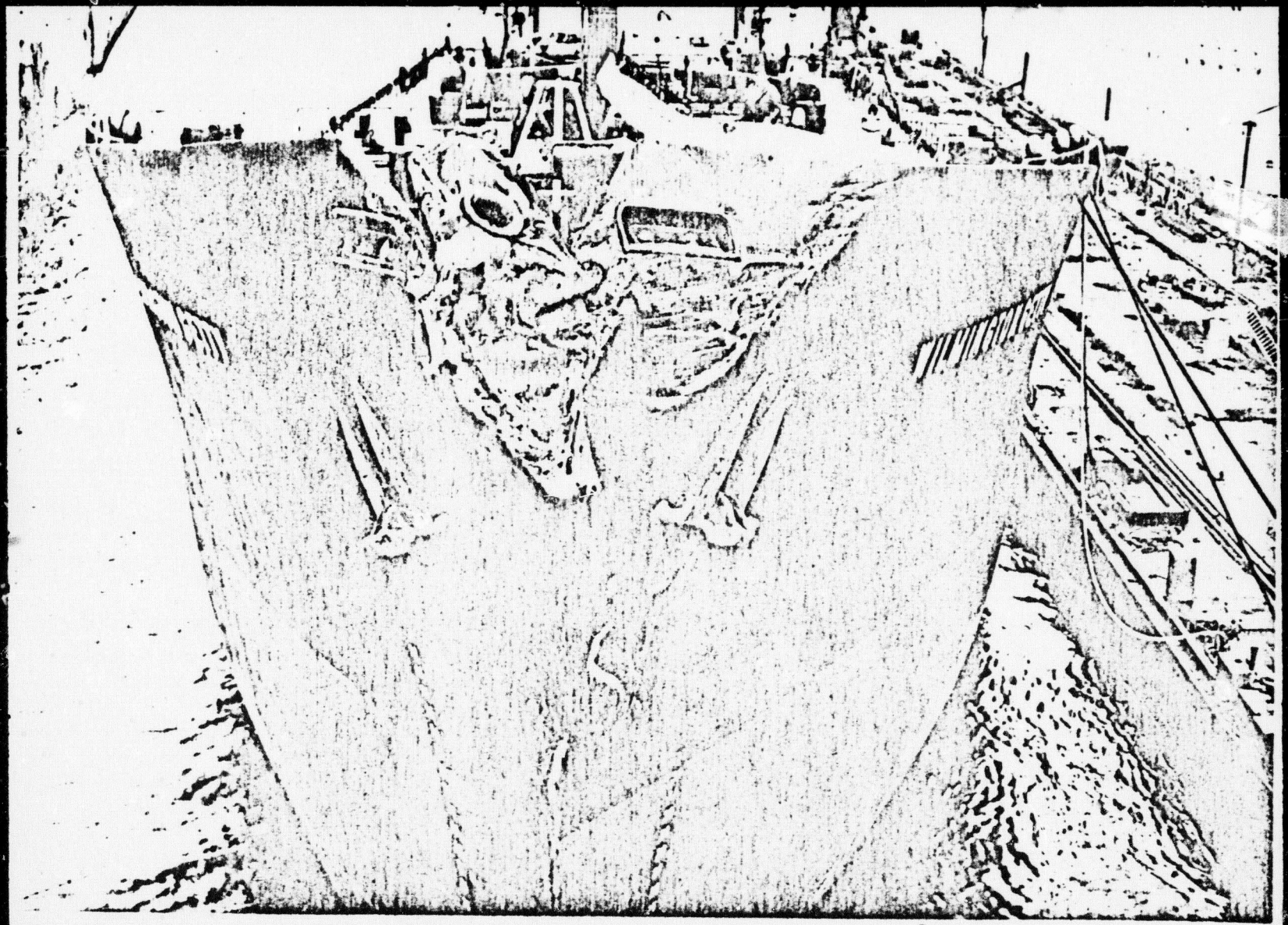
SHIP:

SUBJECT:

PLF's 22-C

10/10/74

582



583

NEG. NO. & 33880 MAY 14 1973

DATE TAKEN:

MARYLAND SHIPBUILDING & DRYDOCK COMPANY

SHIP:

SUBJECT:

PLF's EXHIBIT 22D
FOR IDENTIFICATION
10/6/77 ROBERT ZERKIN

584

Plaintiff's Exhibit 14
Local Notice to Mariners
Closing Anchorage 49C and 25

713

# COAST GUARD

LOK 3/12/73

# LOCAL NOTICE TO MARINERS

ED BY: COMMANDER, THIRD COAST GUARD DISTRICT
rmors Island, New York, N. Y. 10004. Day Phone 264-8739; Night Phone 264-4800
All bearings are in degrees true reading from 0° to 360°
ALL TIMES SHOWN IN LOCAL TIME

E - 1973 INTERNATIONAL ICE PATROL OPERATIONS - The International Ice Patrol ces for the 1973 season were inaugurated on 24 January 1973.
rchant vessels are requested to deliver ice reports and sea temperature mes- to the following activities for relay to COMINTICEPAT:
Ocean Station Vessels - 4YB, 4YC, 4YD, 4YE and Ocean Weather Station Hotel - 4YH on MF (CW) and 2 MHz (V).
Coast Guard East Coast Radio Stations - CGRADSTA Boston/NMF, MF (CW) working freq. 472 kHz; 8 MHz (CW), working freq. 8728 kHz; 12 MHz (CW) working freq. 12934.5 kHz; 22 MHz (CW) working freq. 22487.5 kHz. CGRADSTA Portsmouth/NMN, MF (CW), working freq. 466 kHz; 2 MHz (V), working freq. 2670 kHz; 8 MHz (CW), working freq. 8465 kHz; 12 MHz (CW), working freq. 12718.5 kHz; and 17 MHz (CW), working freq. 17151.2 kHz.
Canadian DOT Coast Station ST. JOHNS, Newfoundland/VON, MF (CW).
ternational Ice Patrol Ice Bulletin Broadcasts will be made as follows:
Coast Guard Radio Station Boston/NIK, 0018 GMT on 5320 and 8502 kHz (CW) and 1218 GMT on 8502 and 12750 kHz (CW).
Canadian DOT Coast Station ST. JOHNS, Newfoundland/VON at 0000 and 1330 GMT on 478 kHz (CW).
U. S. Navy Radio Station Washington/NSS HYDRO 0430 and 1700 GMT on 88.0 (Except Tuesdays), 5870, 8090, 12135, 16180, 20225 (1700 GMT ONLY) and 25590 kHz (1700 GMT ONLY).
Canadian Maritime Command Radio MILL COVE/CFH 0130 and 1330 GMT on 438, 4356.5, 8449.5, 12984, 17218.4 and 22587 kHz (on request).
A radio facsimile broadcast will be made from Coast Guard Radio Station Boston/ NIK at 1600 GMT daily on 8502 kHz plus/minus 400 Hz and 12750 kHz plus/minus 400 Hz Drum speed 120.
Coast Guard Radio Station Boston/NIK will broadcast ice information at 0130 and 1330 GMT on 8765.4 (8764.0) kHz USB and at 0200 and 1400 GMT on center freq. 8764.0 kHz DSB.

DE ISLAND - OFF SHORE - The Massachusetts Institute of Technology is conducting eriments studying the dynamics of wind-driven currents in the area of the inental shelf. As a part of these experiments, two large surface buoys will located within one mile of 40°4 30" N., 71°03'00" W.. The buoys are five t diameter steel spheres with five foot tripods mounted on top and are set a North - South direction. They are marked by a flashing two second white n Light. Two smaller spar buoys are moored near them in a East - West ection. All mariners are requested to assist in this valuable scientific earch by avoiding the area.
S Charts 1211 (NO 13051), 1108 (NO 12120)

DLI's ... 23 ... FOR ... 1c/le/24 ...

*REPORT DEFECTS IN AIDS TO NAVIGATION TO NEAREST COAST GUARD UNIT*

DATE: 7 MARCH 1973 (Page 1 of 8 ) NOTICE NO. 10

DEPARTMENT OF TRANSPORTATION, U. S. COAST GUARD
CG-2535 PP (REV. 2-68)
☆GPO 1970-O-379 983

9790

SUMMARY OF DAMAGED OR DESTROYED FIXED AIDS

| LL No. or Page | Name of Aid | Condition |
|---|---|---|
| 271 | Burlington Bay Jetty Daybeacon | Destroyed |
| (2098) | Harbor of Refuge Light | False Flashes |
| (1630) | Sandy Hook Chan. Lt. 15 Fog Signal | Destroyed |
| 292 | Pea Patch I. Special Warn. Marker PPE | Missing |
| (1619) | Sandy Hook Chan Light 1 | Part. Destroyed; TRLBB * |
| 308 | Indian R. Chan. Daybeacon 53 | Leaning |
| 309 | Pepper Creek Daybeacon 2 | Leaning |
| 308 | White Creek Approach Daybeacon 3 | Leaning |
| (2401) | White Hill Range Front Light | Extinguished & Leaning |
| (1835) | Newark Bay Light 15 | Missing; TRLB*** 15A |
| (2152) | Rehoboth Bay Light 9 | Missing; TRUB** |
| (107) | Atlantic City Light | Improperly Oriented |
| 198 | Morris Rock Daybeacon | Leaning; TRUB** |
| 171 | Niantic River Chan. Daybeacon 3 | Missing |
| 308 | Indian River Channel Daybeacon 53 | Leaning |
| | NEW JERSEY INTRACOASTAL WATERWAY | |
| 496 | Townsend Waterway Daybeacon 68 | Missing;TRUB** |
| 487 | Little Egg Waterway Daybeacon 54 | Destroyed |
| 488 | Little Egg Waterway Daybeacon 68 | Destroyed |
| (4494) | Little Egg Waterway Light 72 | Destroyed; TRUB** |
| (4495) | Little Egg Waterway Light 75 | Destroyed; TRUB** |
| (4496) | Little Egg Waterway Light 79 | Destroyed; TRUB** |
| (4492) | Little Egg Waterway Light 92 | Destroyed |
| (4459) | Barnegat Waterway Light 31 | Missing |
| 484 | Barnegat Waterway Daybeacon 34A | Damaged |
| (4462) | Barnegat Waterway Light 39 | Damaged |
| 484 | Barnegat Waterway Daybeacon 41 | Damaged |
| (4465) | Barnegat Waterway Light 50 | Damaged |
| 484 | Barnegat Waterway Daybeacon 48 | Damaged |
| (4466) | Barnegat Waterway Light 51 | Missing |
| (4468) | Barnegat Waterway Light | Missing |
| (4470) | Barnegat Waterway Light 61 | Missing |
| (4473) | Barnegat Waterway Light 68 | Damaged |
| (4481) | Little Egg Waterway Light 53 | Destroyed |
| (4500) | Great Bay Waterway Light 4 | Destroyed |

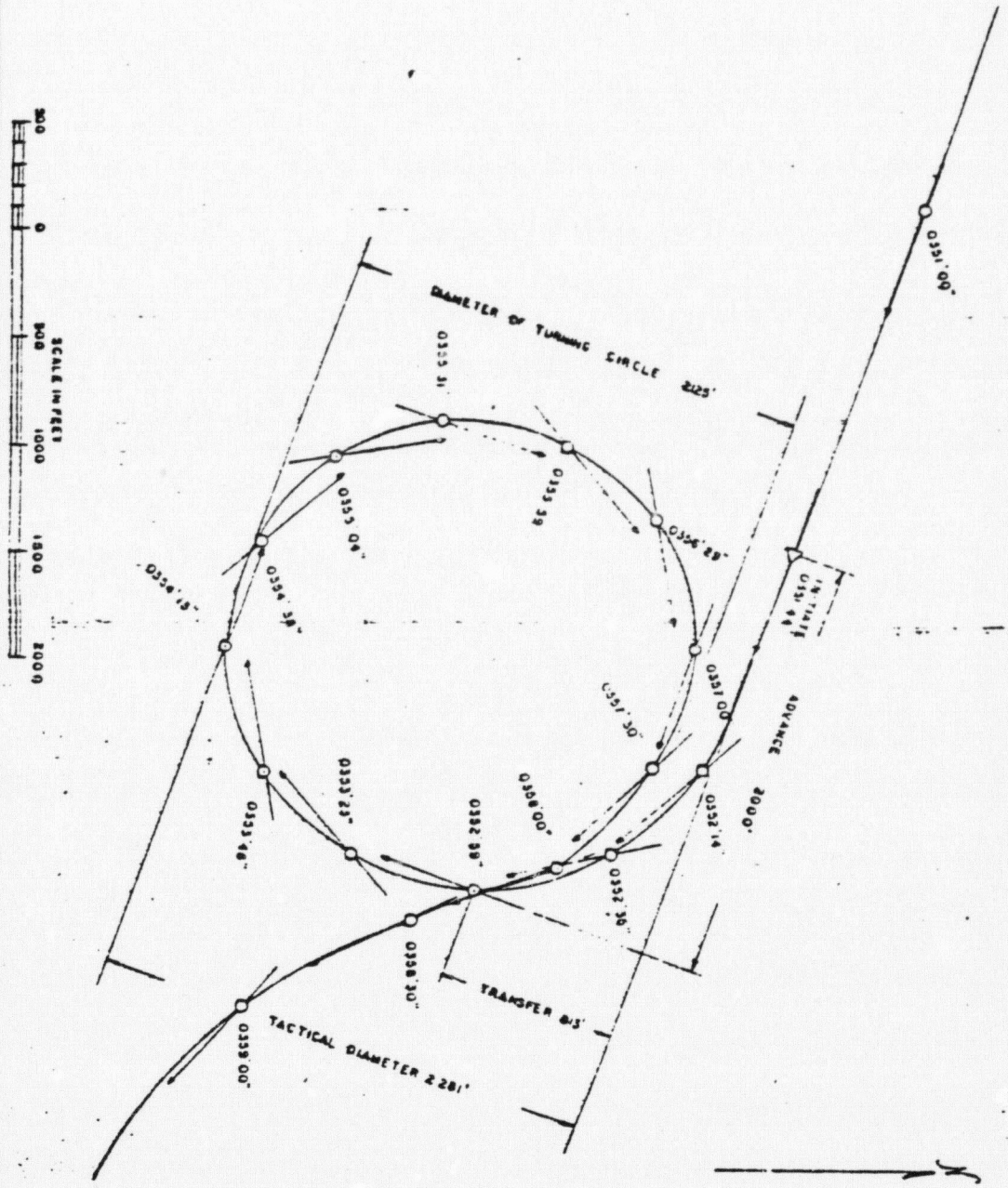
* Temporarily replaced by lighted bell buoy
** Temporarily replaced by unlighted buoy
*** Temporarily replaced by lighted buoy showing the same characteristic.
NOTE: Mariners are cautioned that portions of destroyed structures may remain.

NEW YORK - NEW YORK HARBOR - SPECIAL NOTICE - Gravesend Bay - GRAVESEND BAY ANCHORAGES 49C and 25 are scheduled to be dredged by the U.S. Army Corps of Engineers and will be closed to all shipping commencing 12:01 AM 15 March 1973 until completion of dredging operation approximately 15 June 1973.
CHS Charts 540 (NO 12143), 541 (NO 12144), 746 (NO 12139), 369 (NO 12141), 369SC (NO 12172).

Plaintiff's Exhibit 24
(Lages 28 and 29)
Showing Maneuvering
Characteristics of the
PONCE DE LEON

590

SHIPS LENGTH & HEADING INDICATED BY VECTOR
POSITION PLOTTED EVERY 30 SECONDS DURING MANEUVER
○ POSITION OF RAYDIST ANTENNA




| NO | REVISIONS | AUTH | DATE |
|---|---|---|---|
| | | | |

HASTINGS-RAYDIST
INCORPORATED
HAMPTON, VIRGINIA

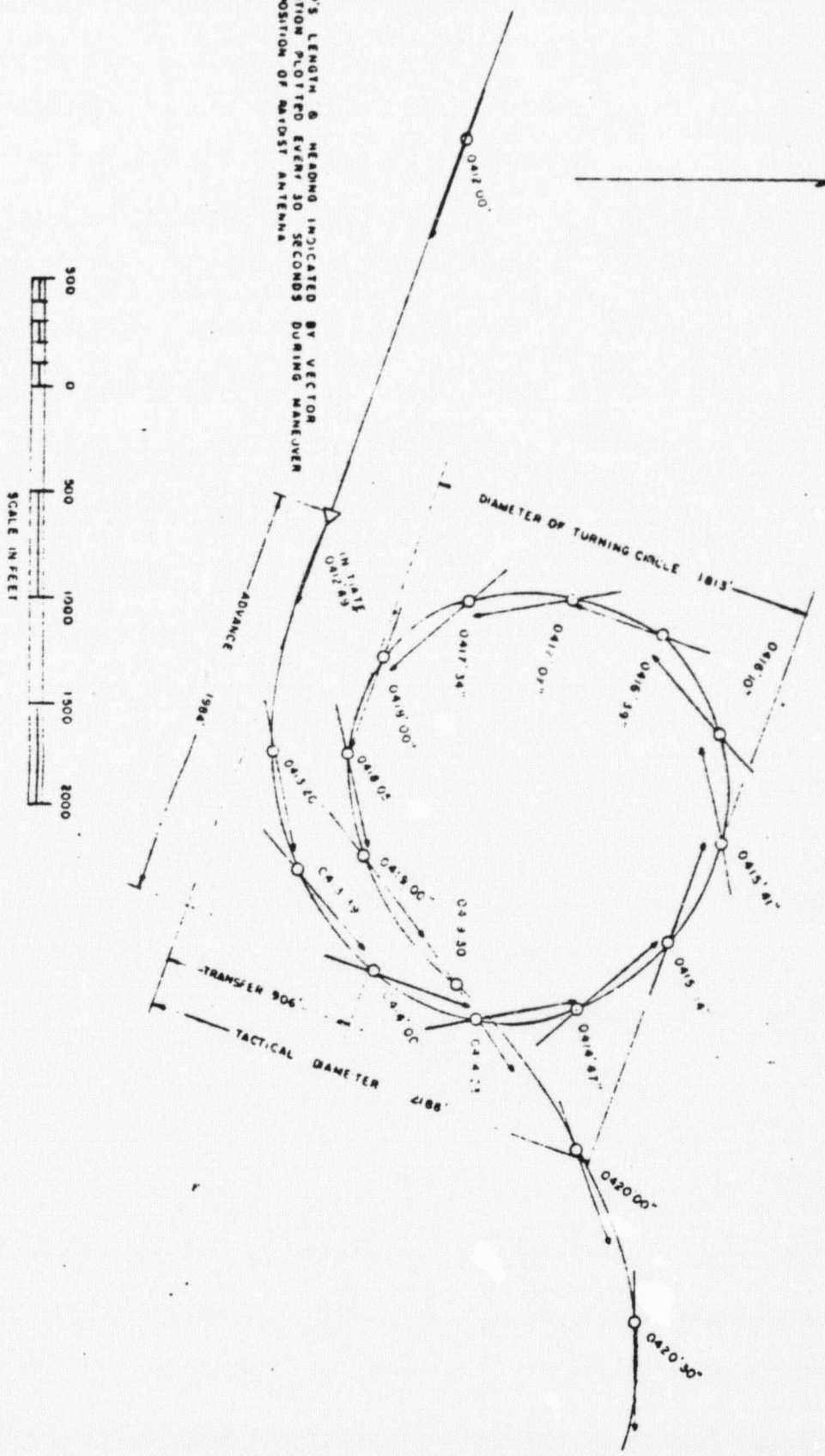
DR: GB
CK: 5/2/68 AM

S S PONCE DE LEON
PLOT OF RIGHT CIRCLE
Sun Shipbuilding & Dry Dock Co., Chester, Pa

SCALE 1" = 500 FT
ASST DR NO.

HB 8758

591




| | | | |
|---|---|---|---|
| LET | REVISIONS | APP | DAT |

HASTINGS-RAYDIST
INCORPORATED
HAMPTON, VIRGINIA

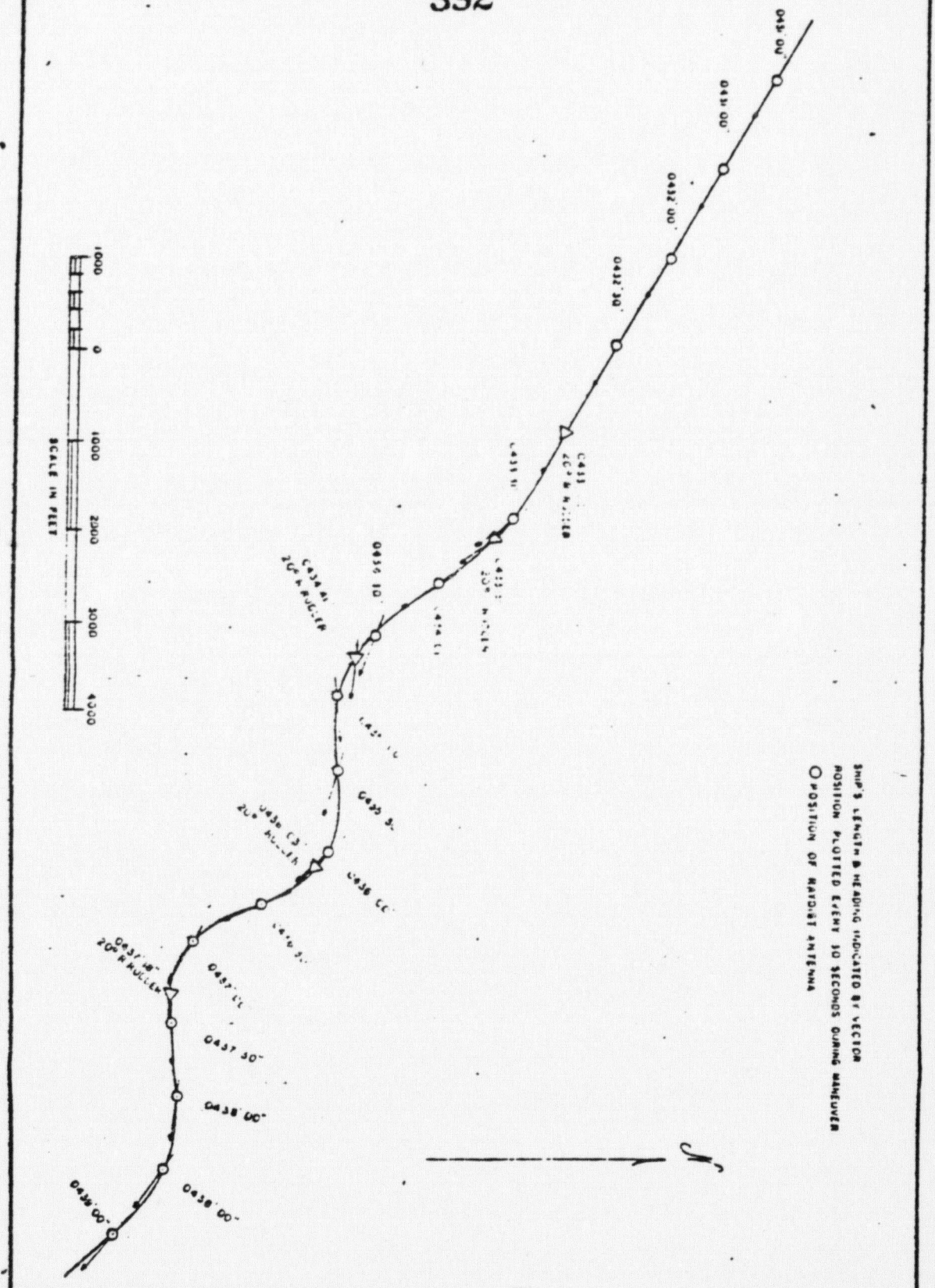
DR
CH
APP

S. S. PONCE DE LEON
PLOT OF LEFT CIRCLE
Sun Shipbuilding & Dry Dock Co., Chester, Pa

SCALE 1" = 500 FT
ASST DR ENG

HB- 8759

592




| NO. | REVISION | APPR | DATE |
|---|---|---|---|
| | | | |

HASTINGS-RAYDIST
INCORPORATED
HAMPTON VIRGINIA

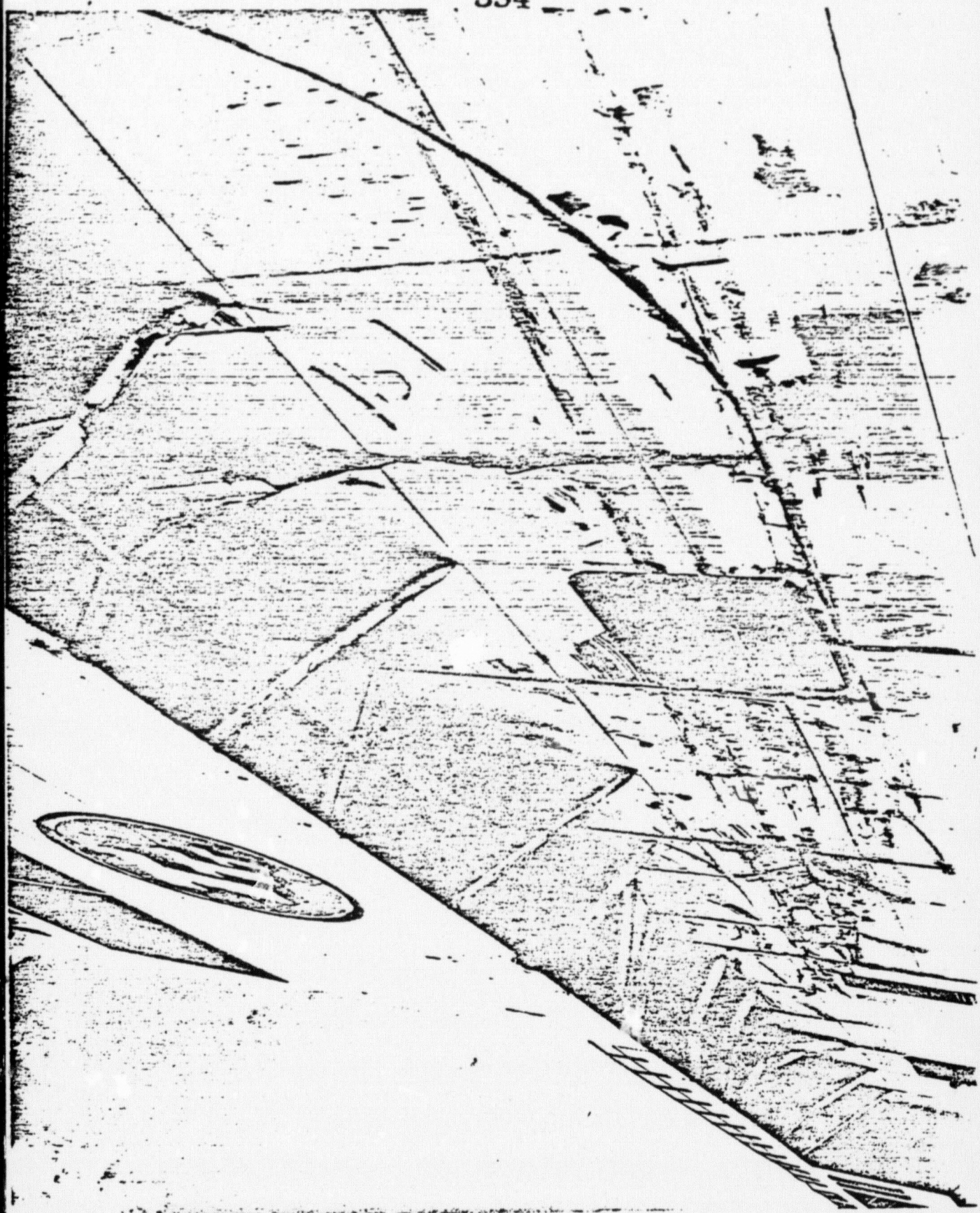
S S PONCE DE LEON
PLOT OF ZEE MANEUVER
Sun Shipbuilding & Dry Dock Co., Chester, Pa

573/68

SCALE 1" = 1000 FT

HB- 8760

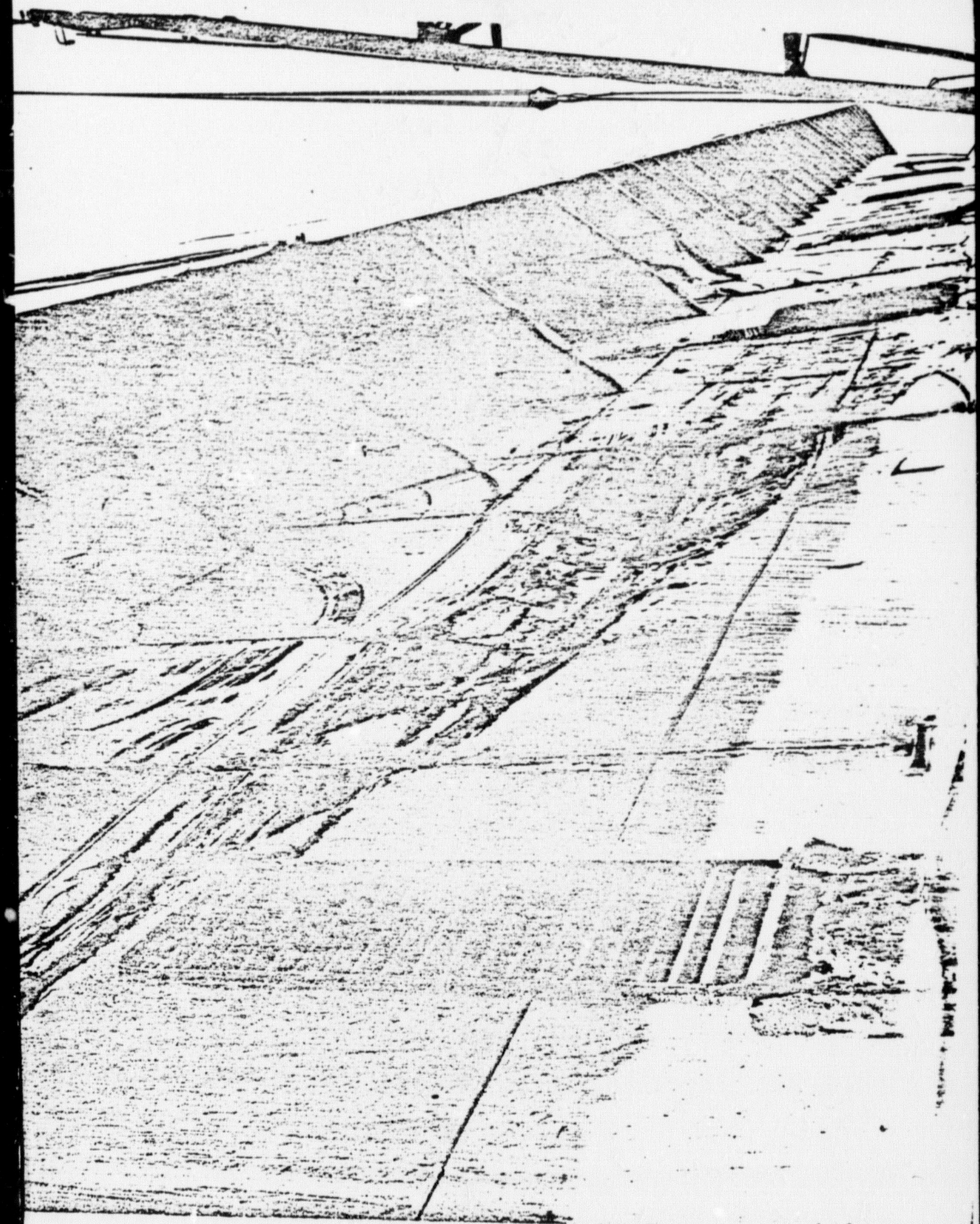
PLAINTIFF'S EXHIBIT 27
[redacted] photographs of Port Side
of the PONCE DE LEON



ALFRED H. MILLER CO. INC
106 FULTON STREET
NEW YORK, N. Y. 10038
photography by THEODORE SEPP

Bethlehem Shipbuilding
Hoboken, N.J.

S/S Ponce De Leon
B S/BH-211



ALFRED H. MILLER CO. INC
106 FULTON STREET
NEW YORK, N. Y. 10038
photography by THEODORE SEPP

Bethlehem Shipbuilding
Hoboken, N.J.

S/S Ponce De Leon
B S/BH-211

CERTIFICATE OF SERVICE

We hereby certify that one copy of the within Joint Appendix was this day served by mail on the following:

Dougherty, Ryan, Mahoney, Pellegrino & Giuffra
Attorneys for Defendants-Appellees
and Cross-Appellants
Sun Leasing Co., and Transamerican
Trailer Transport, Inc.
576 Fifth Avenue
New York, New York 10036

Dated: New York, N. Y.
January 21, 1977

KIRLIN, CAMPBELL & KEATING
Attorneys for Plaintiff-Appellant-
Cross-Appellee

By: [signature]